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SUPREME COURT OF THE UNITED STATES.

No. ~~218~~. 77. 715, 34

THE SOCIETY FOR SAVINGS, PLAINTIFF IN ERROR,

vs.

GABRIEL W. COITE, TREASURER OF THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CONNECTICUT.

GOVERNMENT PRINTING OFFICE.

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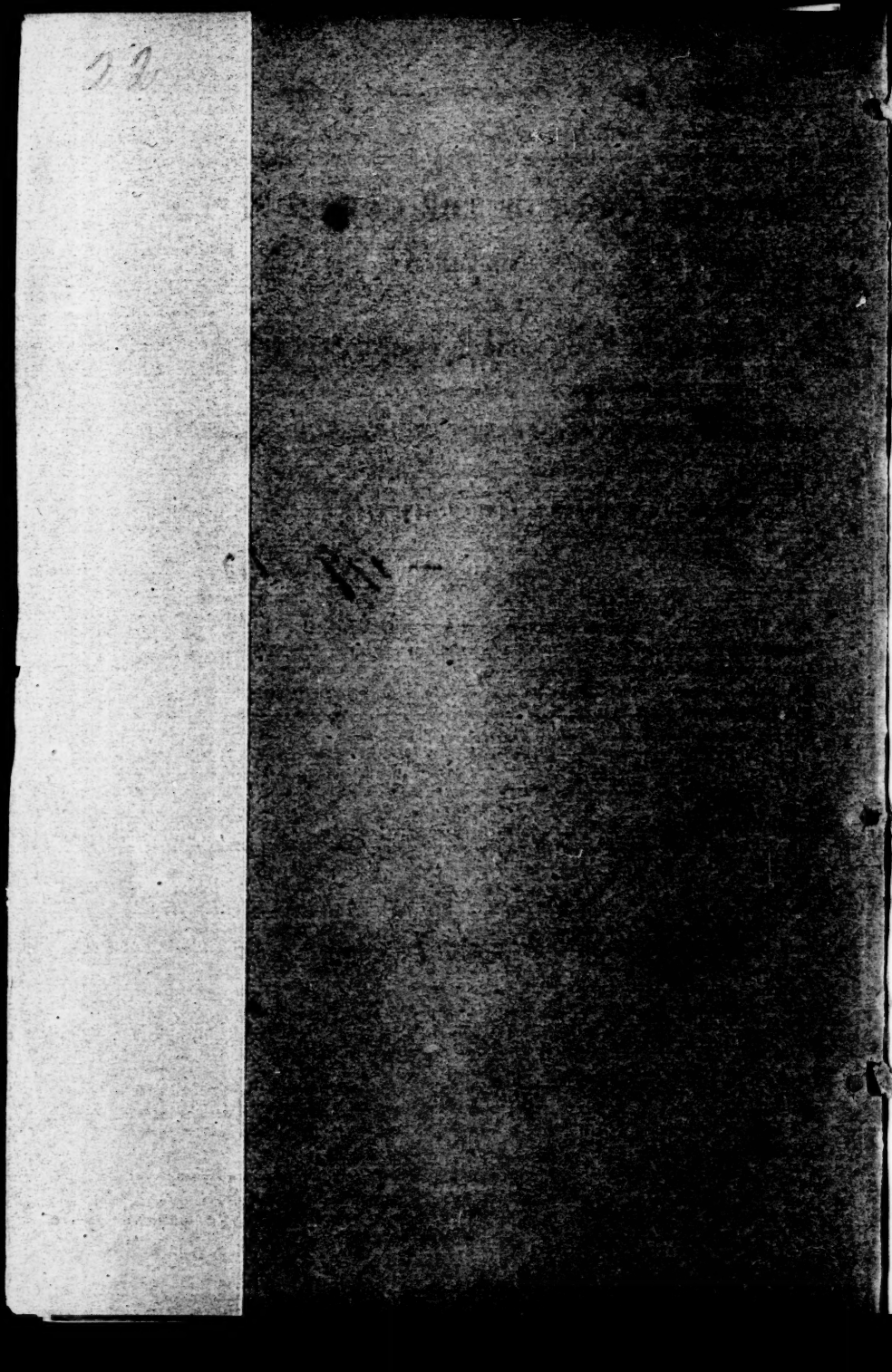

SUPREME COURT OF THE UNITED STATES.

No. 313.

THE SOCIETY FOR SAVINGS, PLAINTIFF IN ERROR,

vs.

GABRIEL W. COITE, TREASURER OF THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CONNECTICUT.

INDEX.

	Original.	Print.
Writ of error	1	1
Agreed statement of facts	3	1
Judgment of superior court	6	3
Appeal to supreme court, State	7	3
Final judgment	10	4
Clerk's certificate	10	4

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court in the court for the correction of errors in the State of Connecticut, greeting:

Because in the record and proceedings as also in the rendition of a judg ment in a plea which is in the said court for the correction of errors before you, between Gabriel W. Coite, treasurer of the State of Connecticut, and the Society for Savings, a corporation duly organized under the laws of said State, a manifest error hath happened, to the great damage of said Society for Savings, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby com-

2 manded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington on the fifth day of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

The office of chief justice of the Supreme Court of the United States being vacant by death, witness the Honorable James M. Wayne, associate justice of said court, next in precedence to said deceased chief justice, at New Haven, this 23d day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-eighth.

ALFRED BLACKMAN,
Clerk of U. S. Circuit Court for Connecticut District.

3 To the honorable superior court of the State of Connecticut, holden at Hartford, within and for the county of Hartford, on the third Tuesday of December, 1863.

Gabriel W. Coite, of said Hartford, treasurer of the State of Connecticut, of the one part, and the Society for Savings, a corporation created by the legislature of said State and located at said Hartford, of the other part, respectfully represent that they are parties to a question in difference which might be the subject of an action at law, and that a suit might be brought to this honorable court to determine said controversy, and that said court would have original jurisdiction thereof; that the parties hereto are desirous, without action, to present a submission of said controversy to this honorable court and have agreed upon a case containing the facts upon which said controversy depends to the end that said court may hear and determine the case and render the judgment thereon as if an action were depending.

And the undersigned respectfully represent that the controversy hereby submitted is real and the proceedings hereby taken are in good faith to determine the rights of the parties to said submission, and that the facts upon which said controversy depends are contained in the following statement, viz:

1. The said Coite is, and for more than one year last past has been, treasurer of the State of Connecticut, duly elected and qualified.

2. The said Society for Savings is a species of corporation commonly known as a savings bank, created by a special act of the legislature of said

State, and organized, doing business, and located at said Hartford,
4 and is empowered by its charter to receive deposits of money, and to loan, use, and improve the same, and to apply and divide the net income and profits thereof in just proportion amongst the persons making such deposits, with such other powers as are contained in the charter of said corporation, to which it is agreed reference may be had.

3. Said Society for Savings, on the 1st day of July, 1863, had on deposit in bank the sum of $4,758,273 37, of which the sum of $500,161 was then invested and held in securities of the government of the United States, which said securities are declared by act of Congress to be exempt from taxation. Said Society for Savings, on said 1st day of July, 1863, made return to the comptroller of public accounts as follows:

OFFICE OF THE SOCIETY FOR SAVINGS,
Hartford, July 1, 1863.

To the comptroller of public accounts of the State of Connecticut:

In conformity with an act of the legislature, passed May session, 1863, I hereby transmit a statement of the deposits with the Society for Savings, in the city of Hartford, on the first day of July, 1863, and first installment of the State tax for the year 1863.

1863, July 1. Amount of deposits.....	$4, 758, 273 37
Less invested in government securities.....	500, 161 00
	4, 258, 112 37
State tax, $\frac{3}{8}$ of 1 per cent	15, 967 92

OLCOTT ALLEN, *Treasurer.*

Sworn to before me July 15, 1863.
JOHN C. PARSONS, *Justice of Peace.*

4. Said Society for Savings, on the 1st day of July, 1863, made payment within the time required by law to the said Coite, as treasurer, of the first installment, viz: $\frac{3}{8}$ of 1 per cent. on the balance stated in said report, deducting said sum invested in government securities and paying noth-
5 ing therefor. And said Coite thereupon insisted and demanded that said Society for Savings should account for and make payment on the full amount of deposits in said bank on the 1st day of July, 1863, viz: on the sum of $4,758,273 37, but said Society for Savings then neglected and refused and ever since have neglected and refused so to do.

The undersigned therefore present this their submission under and in pursuance of the statute laws of this State relating to arbitration and amicable suits, and pray this honorable court to hear and determine the case hereby submitted, and render judgment therein as if an action at law were depending between the parties.

G. W. COITE, *Treasurer,*
By HUBBARD & McFARLAND, *Att'ys.*
SOCIETY FOR SAVINGS,
By Z. A. STORRS, *Attorney.*

STATE OF CONNECTICUT, *County of Hartford, ss:*

HARTFORD, *Feb.* 8, 1864.

Personally appeared the within-named William W. McFarland, one of the attorneys for the said G. W. Coite, treas., and Zalmon A. Storrs, esq., attorney for the said Society for Savings, and made solemn oath that the controversy as set forth in the within and foregoing statement is real, and the proceedings in the premises in good faith to determine the rights of the parties. Before me. JAMES NICHOLS, *Justice of the Peace.*

6 At a superior court holden at Hartford, within and for the county of Hartford, in the State of Connecticut, on the fourth Tuesday of September, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. James Phelps, judge.

Gabriel W. Coite, of said Hartford, as treasurer of the State of Connecticut, and the Society for Savings, a corporation created by the legislature of said State and located in said Hartford, parties to a question in difference, presented their submission in writing to the consideration and arbitration of said court, at the December term thereof, 1863, praying said court to render judgment therein as if an action at law were depending between the said parties. Said cause was continued to the present term, when said court did render judgment in said amicable suit in favor of said Coite, treasurer as aforesaid, that he recover of said Society for Savings the sum of dollars.

Whereupon the said Society for Savings, within the time prescribed by the statute, filed the following motion in error, which motion was allowed and the record transmitted to the September term of the supreme court of errors.

7 Superior court, Hartford County, Sep. term, A. D. 1864.

GABRIEL W. COITE, treas.,
vs.
THE SOCIETY FOR SAVINGS.

The defendant, within twenty-four hours after final judgment, respectfully represents that said society is aggrieved by the decisions of the court in this cause upon the questions of law therein apparent on the record, and moves that the record thereof may be transmitted to the supreme court of errors, to be held at Hartford, in and for said county of Hartford, on Tuesday, the fifteenth day of November next, for the revision of the manifest errors therein contained; and for such errors the defendants assign the following, to wit:

That upon the facts agreed upon by the parties, and upon the questions submitted upon those facts, judgment should have been rendered for the defendants and not for the plaintiff.

THE SOCIETY FOR SAVINGS,
By F. CHAMBERLIN, *their Attorney.*

The court allows said motion, and F. Chamberlin is recognized in $100 that said defendant shall pay all damages if he fail to prosecute said motion to effect.

PARDEE, *Judge.*

The plaintiff does not object to the allowance of the within motion nor desire to be heard.

GABRIEL W. COITE, *Treasurer.*

8 SUPERIOR COURT, *Hartford County, Clerk's Office:*

The above and foregoing is a true copy of record in the superior court.

Attest: CHAUNCEY HOWARD, *Clerk.*

SUPREME COURT OF ERRORS,
Hartford County, Clerk's Office, ss:

The above and foregoing is a true copy of record in the supreme court of errors.

Attest: CHAUNCEY HOWARD, *Clerk.*

9 At a supreme court of errors, holden at Hartford, within and for the county of Hartford, in the State of Connecticut, on the second Tuesday of September, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Honorable Joel Hinman, chief judge; Honorable Thomas B. Butler, Honorable Henry Dutton, Honorable John D. Park, associate judges.

Gabriel W. Coite, of the town and county of Hartford, as treasurer of the State of Connecticut, of the one part, and the Society for Savings, a corporation created by the legislature of said State, and located at said Hartford, of the other part, representing themselves as parties to a question in difference which might be the subject of an action at law, made their submission in writing to the consideration and arbitration of the superior court within and for the county of Hartford, at the December term of said court,
10 A. D. 1863, which submission was continued to the September term, 1864, of said superior court, at which term said court did render judgment in said amicable suit in favor of said Coite, as such treasurer, that he recover of said savings society the sum of dollars.

The defendant thereupon filed a motion in error, upon the allowance of which motion the record was transmitted to this court at its present term.

And now, after a hearing in said cause, this court doth render judgment in favor of the said Coite, as treasurer, and thereupon doth adjudge that he recover of said Society for Savings the sum of dollars.

STATE OF CONNECTICUT,
County of Hartford, Clerk's Office, Sup. C't of Errors, ss:

The above and foregoing is a true copy of record.

In testimony whereof, I do hereunto subscribe my name and affix the seal of said supreme court of errors this 1st day of December, A. D. 1864.

CHAUNCEY HOWARD,
Clerk of Sup. C't of Errors.

Filed 6th December, 1864.

SOCIETY FOR SAVINGS, PLT'FF IN ERROR

vs.

GABRIEL W. COITE, TREA'S.

SUPREME COURT OF UNITED STATES.

ARGUMENT FOR PLT'FF IN ERROR.

BY F. CHAMBERLIN,

OF COUNSEL.

HARTFORD:

PRESS OF CASE, LOCKWOOD AND COMPANY.

1867.

SOCIETY FOR SAVINGS, PLT'FF IN ERROR

vs.

GABRIEL W. COITE, TREA'S.

SUPREME COURT OF UNITED STATES.

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1867.

Supreme Court of the U. S.

THE SOCIETY FOR SAVINGS,
PLAINTIFF IN ERROR
vs.
GABRIEL W. COITE,
TREASURER OF THE STATE OF CONN.

BRIEF OF PLAINTIFFS IN ERROR.

The facts out of which this suit arises are briefly and fully stated upon the first and second pages of the record, to which reference is hereby made.

The case as therein found was agreed upon under and in pursuance of provisions of the "General Statutes" of Connecticut.

The "Society for Savings" is a corporation created in 1819 by Special Act of the legislature of Connecticut (2 Private Acts 1049–57) and is empowered by its Charter to receive deposits of money and improve them for the benefit of its depositors.

Provisions are introduced tending to secure economy in the management of its affairs and a division *of all the profits* among the depositors.

In 1821 the Society was *specially authorized* to invest its funds *in the Stock of the United States;* and all Savings Banks in Con-

necticut were, in 1862, authorized by general statute to invest in United States Securities in larger proportionate amount than was here invested.

The legislature in 1862 (Session Laws 1862, p. 49) enacted that the treasurers of the several Savings Banks, &c., should make annual return of the total amount of all deposits in said institutions, on the first day of July in each successive year.

And that each of said Savings Banks, &c., should annually pay to the Treasurer of the State a tax of $\frac{1}{2}$ of one per cent. "upon the whole amount of their deposits and stock" on the first days of July aforesaid.

By an act in 1863 the rate of assessment was increased to $\frac{3}{4}$ of one per cent. (Private Laws of 1863, p. 130.)

The defendant in Error was treasurer of said State.

On the first day of July, 1863, the said Society, having invested of its deposits $500,161 in Securities of the United States, deducted that amount from the total amount of its deposits and duly paid to said treasurer the tax upon the balance.

The "said Coite thereupon insisted and demanded that said Society for Savings *should account for and make payment on the full amount of deposits* on said first day of July 1863, which the plaintiff in error refused to do."

Said Securities of the United States, were specially exempt by Act of Congress from taxation by or under State authority, "whether held by individuals, *corporations* or associations." Stat. at Large, vol. 12, p. 346.

Upon the case submitted, the Superior Court of Connecticut held that the Society was bound to pay upon the full amount.

Upon error, this judgement was affirmed by a majority of the Supreme Court of Errors.

The majority and minority opinions delivered by that Court are herewith submitted.

It will not be claimed on behalf of the State, that its government may rightfully tax the Securities of the Federal Government.

Whether said Statute of Connecticut, as sought to be enforced by said treasurer, imposed *a tax upon such securities?* is the principal question in the case.

Points.

1st. The language of the enactment seems plainly to ordain a tax *based upon property.*

It provides that each Savings Bank, &c., "shall annually pay to the treasurer, &c., a sum equal to $\frac{3}{4}$ of one per cent. *on the total amount of deposits and stock* in such institution on such first days of July."

It is in phraseology, even more directly *upon the "property,"* than the Statute of New York, which received construction in the recent "Bank Tax Case."

That provided for a tax "*upon a valuation equal* to the amount of capital stock" &c.; this for a tax "*on the total amount*" of deposits, &c.

The first is on a *valuation equal to the amount;* this *on the amount,* &c.

It will not be seriously claimed that there is a distinction between *taxing* a bank and *requiring a bank to pay a tax*; and it is submitted that there is *no substantial* difference between the two Statutes.

The decision of the New York Court of appeals was much relied upon by the majority of the Supreme Court of Connecticut in coming to their result.

Although the decision of this Court in the Bank Tax Case was *known* when Judge McCurdy added the last page to the majority opinion of the Court of Connecticut, and is alluded to on that page (190) of the opinion furnished herewith; the opinion had not been published.

We submit that the reasoning of this Court in that opinion is much of it quite applicable to the question under discussion.

In 2d Wallace, p. 207, Judge Nelson says that in making up a tax under the law of 1863, "the Commissioners need only look into the condition of the Bank in order to ascertain *the amount*

of the capital stock paid in or secured to be paid in and this sum in the aggregate *will constitute the basis*," &c.

The New York Legislature probably meant to impose a tax which should be construed as a tax upon franchise and privilege, irrespective of property—but the Court inquire, what is *the basis* of the tax?

In New York the *basis* is found to be the amount of "capital paid in or secured," &c.; in Connecticut it is equally clear that "*the amount of deposits*" is the *basis*.

The assumption as a probable result, that the amount of "deposits" will fairly represent the Company's assets, is precisely like the assumption by the legislature of New York, that the amount originally paid in as "capital" fairly represents the present value of the assets of a bank.

2d. It is suggested that the "standard" fixed ignores all reference to present values, modes of investment, accumulations, losses or profits; we answer precisely so does the New York Statute.

And again it is said that it is "preposterous" to claim that we are entitled to a reduction because some of our assets are *non-taxable*, when we should not be so entitled if they were worthless or non-existent.

We answer that this would be equally the case under the New York Statute, in which this Court has held that parties governed by "capital paid in" would be entitled to no reduction if it should be lost—but *are* so entitled if the capital is *invested in U. S. Securities*.

The rule being, that the "deposits" under one Statute, and "capital" under the other, are the standard, *unless reduced* by having *transmuted a portion* of the amount into property *expressly exempt* from taxation and *being the present owner* of such exempt property.

The immunity arises from having loaned a portion of the deposits to the general government and taken its certificate of debt in lieu thereof.

The "investment" is withdrawn by the Supreme authority of the Constitution of the United States from the exercise of the State power of taxation.

3d. If it be shown that this tax *is* upon *property*, then confessedly these Securities, so exempt, are included in making up a *basis* upon which to fix the amount of the taxation.

The plaintiff is taxed three-fourths of one per cent. on $500,000, *more*, because of its ownership of these United States Securities than it would be if its deposits were $500,000 less—and this when clearly the entire burden of the imposition must necessarily fall upon and diminish the value of the Securities so held.

Is it material that this additional tax is *based* upon *cash paid for* the additional property, rather than assessed on the property?

Suppose Defendant had been a natural person, with whom this money had been deposited for investment, under a law which prohibited him from receiving any compensation for his labor, or receiving any profit from its result, and the same government which prohibited him from receiving compensation or profit—being of course perfectly cognizant of all the facts—should require him to pay $\frac{3}{4}$ of one per cent. *upon the amount deposited with him.*

Could there be any possible difficulty in arriving at the meaning of the legislature.

Would it not be "doing injustice to the intelligence of the legislature" to presume that they meant to compel the unremunerated *person* to pay the tax for the *privilege* of *receiving* and *investing* the deposits?

But if *he* is not *personally* to pay it, but to pay it from and in diminution of *the property*, is it not equally clear that it is a tax *upon the property?*

Is it not absurd to say that although the *property* pays the tax, it pays it for the personal privilege enjoyed by the individual in charge of it? And is it not almost, (if not entirely) conclusive of this question that the plaintiff in Error is in all material qualities, this unremunerated individual.

Upon this point the reasoning of Judge Parke (opinion pages 195 to 197) is also pertinent. He says, "Now where is the difference between a tax upon property, and a tax upon a person measured by the amount of his property? In either case the property is the foundation and moving cause of the tax."

"If a person has no property he has no tax. If he has small or large possessions his tax is small or large in proportion. The difference is in form and not in substance."

"Suppose a person should invest the sum of $1000 in United States Securities, and the Legislature of the State should say to him in the form of a law, 'inasmuch as we cannot tax you for the money loaned to the general government, you as an individual shall pay a sum equal to the tax on $1000, vested in taxable securities.' Would such a law be in harmony with the constitution of the United States and the law of congress?"

"It might be said that the law does not tax the sum loaned; indeed it expressly declares that it does not, but imposes the tax upon the *individual!* But, it would be said the intent is too obvious."

"It is in form a tax upon the individual, but in substance a tax upon the sum loaned."

"And so it seems to me is the case under consideration. It is in form a tax upon the institutions, but in substance it is a tax upon their property; and it is the duty of the courts to look through the shadow to the reality. Brown *vs.* Maryland, 12 Wheaton, 419."

"*These considerations are strengthened by the fact, that in no instance heretofore has the State taxed the franchise of any corporation.*"

"*Such a system of taxation has never been known in this State, and certainly it is marvellous that it should commence with this class of institutions,* whose charters are not valuable."

"Indeed, the same statute which imposes the tax in question, *imposes taxes upon the property* of *all other* corporations."

"Why should discrimination be made in relation to the property of savings banks and building associations?"

The franchise of a corporation is a part of its property, and if valuable adds to the value of its capital stock.

But probably no franchise in the State would as property be estimated to be of the value of $4,738,273.37.

Certainly it would not be presumed that such value could be predicated of the franchise of a corporation whose business is done, not only without pecuniary profit, but without compensation to its corporators or trustees *for actual services.*

A tax of "a sum equal to 3-4 of one per cent. on the total amount of its deposits and stock" on a given day, is to be paid to the State.

It amounts in the case of the ptf. in error, to over $30,000 annually.

Is it a tax on the naked franchise, *irrespective of property?* or is it a tax either directly or indirectly *upon* the property?—and to be paid *from* the property? We say; 1st. It must *necessarily be deducted from the property of the depositors;* and it of course diminishes the amount otherwise to be paid to them as dividends.

2d. The only possible relation of the depositors, whose funds pay the amount, to the tax paid, arises out of their ownership of the property, which is the *basis* of determining its amount, or as the counsel for the Treasurer well expressed it, in the argument in the court below, "the standard of taxable liability."

If the tax is "irrespective of *property*," it would seem that it should be irrespective of the depositors, who sustain no other than a property relation to the corporation.

4th. It is said that this law does not allude to any property *as such;* that it "provides for no valuation, creates no lien, and directs no sale or forfeiture for non-payment."

If all this be true, (which is not admitted,) it may with equal justice be said of enactments imposing taxation upon railroads,

insurance companies and other corporations, where it is quite evident the tax is based *upon* and proportionate *to* property.

5th. The statute under consideration, (ch. 55 of acts of 1862,) also imposes a tax upon railroad companies, of "3-4 of one per cent. of the value of the capital stock of such company," (in lieu of all other taxes,) and it is expressly provided that when a portion of the road is *out of the State*, only such proportion of such 3-4 of one per cent. of the value of the stock of such road as the length of that portion of the road which lies within the State, bears to the whole road, shall be paid; exempting from taxation the property not within the jurisdiction of the State, and showing that *the property is the basis of the taxation.*

Ch. 55 of acts of 1862 is mainly a re-enactment of the act of 1859, and it, and also ch. 67 of acts of 1862, contain some expressions quite significant of the legislative purpose.

The 3d section speaks of a tax designated as "a sum equal to 3-4 of one per cent. of the value of the stock," &c., as a tax hereby imposed "*upon the stock.*"

The 5th section gives banks a lien upon the stock of non-resident stockholders for the reimbursement (of the sum equal to 3-4 of one per cent. upon the *stock*) of the tax; and designates it "the sum so required to be paid *thereon*"—i. e. upon the *stock.*

Ch. 67 of acts of 1862 designates ch. 55 as an act "imposing a tax of one-half of one per cent. upon *the amount of all deposits and stock* in the several savings banks," &c., and the second section of the same act has this clause: "Provided, however, that any sums which may have heretofore been paid by said institutions into the treasury of the State as taxes *on the deposits and stock* in said institutions," &c.

The taxes so designated as taxes "*on the deposits and stock* in said institutions," were paid under a statute in all respects (material to this question) like the one we are called upon to construe.

It would seem from this language that the legislature looked upon this tax, as a tax on the *deposits and stock* in these institutions, and we submit that when we are seeking to get at the legislative intent and purpose, such a declaration, if not controlling, is entitled to great weight.

In construing a legislative enactment, the *whole statute* should be looked at.

Looking at the whole statute here requiring construction, we see that the legislature provide for a per centage "upon the total amount of deposits *and stock* in the several savings banks, societies for saving, and savings and building associations," in the State.

It is said by Judge McCurdy, opinion page 191, that savings banks in Ct. "have no *stock* and no capital," and this is given as a reason for giving a different construction to this statute, from that authoritatively given to the similar statute in New York—but a considerable number of the institutions named *in* and taxed *by* this statute, at the time of its enactment owned stock, and made in the same year, and again in 1863, return of "stock" accounts—varying in 1863 from $2,000 to $120,000.

Among the institutions so making returns in 1863, are some called "savings banks," as the "City Savings Bank of New Haven," and "savings institutions," as the "People's Savings Association of Bridgeport."

The fact will not be controverted, as it is contained in a report published by the Treasury department of the State, and it seems to deprive the court of Ct. of the fact, upon which the distinction attempted to be set up by Judge McCurdy is based.

In view of this fact it seems difficult, (if not impossible,) to say, that the legislature in passing this law, does not in speaking of deposits and *stock*, allude to property as such.

"Corporations are to be treated like other owners of property, when no provision is made to the contrary."

Savings Bk. *vs.* New London, 20th Ct. 115.

This view held by the court, is the same as that expressed by the legislature in sec. 10 of title 55 of compilation of 1854, (Ct. statutes,) which declares the policy of the State to be, to assess the property of corporations there named, " in the same manner and to the same extent, as if owned by an individual resident in this State."

6th. The institution was specially authorized to invest its deposits in securities of the United States Government.

" The grant of a right carries with it as an incident, the grant of suitable and proper means to enable the grantee to exercise that right, and *to reap and enjoy its fruit.*"

New Haven *vs.* City Bank, 31 Conn. 110.

The principle announced, is not new, and needs no authority to sustain it; but the case in 31 Conn. is referred to, because the question there considered was in some respects quite similar to the one now under discussion.

In that case the dfts'. charter contained a provision requiring the corporation, as soon as organized, to subscribe for $100,000 of capital stock of a canal corporation; and provided that in consideration of such subscription, the *capital stock* of the dfts'. Co. should remain free from taxation till the stock subscribed for should become a six per cent. annual dividend paying stock. In 1854 the legislature of Conn. enacted that the real estate of a bank not used by such bank for the transaction of its appropriate business, should be assessed in the town where such real estate is situated, and be liable to taxation to the same extent as if owned by an individual.

Real estate in new Haven not used by the bank was assessed by ptf., and the question was whether the property was legally taxable.

This depended upon the question, whether it could properly be distinguished from the " capital stock."

The bank being as to its " capital stock" exempt from taxation by contract with the State, stood as to that, in the same condition in which the plaintiff in error stands as to its investment in U. S. securities.

It was attempted then to make a distinction between the real *property* of a corporation and the shares of capital stock in the hands of its shareholders.

The Court say, pages 111, 112, the real question is, "whether the promised exemption, which confessedly covers the intangible ideal rights, called shares, in the hands of the stockholders, covers also the *property*, real and personal, in which the whole value of those shares consists; *whether it is possible to impose a tax upon the latter, without having the entire burden of the imposition fall upon the former;* and if it is not, *whether the construction contended for by the town can be* the true construction of the grant, &c.; and in the "Bank Tax case," (2 Wallace, 208,) Judge Nelson says: "Now when the capital of banks is required, or rather authorized, to be invested in stocks, and among others in United States stocks, and this capital thus invested is made the basis of taxation of the institutions, there is great difficulty in saying that it is not the stock thus constituting the corpus or body of the capital that is taxed."

"It is not easy to separate the *property* in which the capital is *invested* from the capital itself. It requires some requirement to separate the two thus intimately blended."

It is submitted that substituting "deposits" for "capital" this reasoning of the court is equally applicable to this case.

7th. It may be said that *deposits* are not *capital*; literally they are not synonymous, but they are certainly very analogous to capital, and for all the purposes of this case they sustain the same relation *to this institution* which capital sustains to a bank.

Each is, or represents money received by the corporation to be managed for the benefit of the owners; each is properly classed among the *liabilities* of the corporation; each constitutes the principal fund from which investments are made, and perhaps the principal difference consists in the fact that capital properly so called remains somewhat permanently with the corporation, while deposits in this institution may be withdrawn upon giving four months notice. Plaintiff's Charter, Sec. 3.

8th. The plaintiff was not only authorized to purchase these securities, but the General Government stipulated that the holder, whether individual or "*corporation*," should be exempt from State taxation on account of such ownership.

Upon *the faith of that stipulation* the plaintiff purchased them. If this tax can be enforced on account of such ownership the effect necessarily is that the plaintiff loses all benefit from that stipulation—the bonds are worth to the plaintiff three-quarters of one per cent. a year *of interest*—or about one-eighth of principal (twelve cents in the hundred) less than to a natural person who has the benefit of the exemption.

It may be replied, and indeed seems necessarily to result from the opinion of Judge McCurdy, that the franchise or faculty of an *individual* or *natural* person may be taxed in the same way if the position of the majority of the court should be sustained.

If this may be done it annuls in a very simple and easy manner the entire force of the constitutional exemption and nullifies any and all legislation of Congress upon this subject.

The State has only to tax the "*faculty*" of the dealer, (whether natural or artificial person,) making the extent of his investments the "standard" of his liability, and the *result* is that the burthen rests upon all investments including securities of the United States.

The reasoning and illustrations, if they prove any thing, prove too much.

9th. Most if not all the positions set up and advocated by the defendant in error, were discussed on behalf of the Tax Commissioners, in the Bank Tax case.

It was then claimed that the tax was *not on the property* of the bank, but on the *corporation specifically*.

That the corporation was created by the State and ought to pay for the valuable franchise which it enjoyed.

That the *purpose* of the act *was* to compel payment *therefor*.

That the reference in the statute to "a valuation equal to the amount of their capital stock," &c., was only for the purpose of fixing the amount the corporation ought annually to pay for their *franchise*.

That it had no regard to the actual capital *owned* by the bank, or to the securities, or to the value of the securities held by it.

That the corporations' being created by the State, and dependent upon the State for continued existence, could properly be compelled to aid in bearing the State burdens, as the price of

their existence, &c. &c. See Brief of Devlin and others in 2 Wallace, 201, 2.

I respectfully refer the court to the Brief of Messrs. Lord and others for the banks, in that case, as containing many propositions equally in point here.

The same questions were there raised and discussed by counsel and by the court, as in this case, and it seems quite difficult to distinguish by any substantial difference between the two cases.

10th. It can not be denied that the law of Connecticut, *if enforced as the Treasurer proposes*, would *result* in the taxation of United States securities. In reply to this, Judge McCurdy says, "If the *unintentional*, remote and indirect result of the law is in some degree to affect their value, (United States securities,) surely that circumstance should not be held sufficient to nullify the high prerogative of the State in a matter so vitally important as the taxation of its own citizens, and especially the institution of its own creation." Opinion, p. 188.

How such a result in this case could have been "unintentional," it may be difficult to see, but in reply to its being "remote and indirect," I refer to the dissenting opinion of Judge Park, page 192, 3. "It will be conceded that what can not be done directly by the legislature of a State, can not be done indirectly, having in view the same end to be accomplished. Whatever may be the means employed *it is the thing done* that characterizes the act."

"It will be conceded further that so far as the question in this case is concerned, it is a matter of no importance that the standard of taxable liability is the amount of all deposits on the first day of July in each successive year, rather than the *amount invested* at that time, for the sum in question was not in the bank of the defendants on the 1st day of July, 1863, but had been invested some time previous thereto."

"It had passed through the bank and was then in the treasury of the United States, and the bank held its promises to pay in lieu thereof."

"Now how does the case stand? The constitution of the United States has been held to declare and the law of Congress expressly declares, that no burden shall be placed upon the power

of the General Government to borrow money—that its promises to pay shall go free of taxation, into the possession of every creditor of the government and shall remain free."

"This exemption from taxation is in the nature of a premium to induce all persons, natural and artificial, to loan their money to the Government."

"The defendants have loaned the Government more than $500,000. If the law in question be constitutional it is impossible to conceive how or wherein they or their depositors, the real creditors, have been benefited, or are likely to be in the slightest degree by the exemption."

"The amount of the defendant's tax is precisely the same to all intents and purposes as it would have been if the law had imposed the tax directly upon the property of the defendants," &c.

And again on page 193, "If this law be constitutional it is not easy to see why every creditor of the Government may not be taxed in a similar manner."

"Suppose the legislature should pass a law that all persons who have loaned money or invested the same in stocks of any kind, or who should thereafter do the same, *shall make annual return* of the total amount of all such sums of money which remain invested on the first of July in each successive year, and that every such person *shall annually pay* to the treasurer of the State, a sum equal to three-fourths of one per cent. on the total amount of all such money. Suppose a person should make return that among other investments he had loaned the General Government $10,000."

"Wherein does his case differ from the one under consideration?"

"No one will doubt the power of the legislature to tax individuals and to discriminate in imposing such tax."

"*It might be said in such a case with equal propriety that the law does not impose the tax* upon *the property* of the individual, but upon the individual himself—upon his capacity to make money."

"It might be urged that the law does not tax *the property* of the individual, because it takes no account of the value of his investments."

"Should they be worth twice or thrice the amount invested,

he pays no more; if not worth one-half the amount he pays no less."

"If he has unwisely invested in worthless paper or forged notes, they are not to be taken into consideration in ascertaining his taxable liability, but it is to be ascertained by a fixed, arbitrary, arithmetical calculation, three-fourths of one per cent. on the total amount of money invested."

"It might be urged that when the law imposes a tax upon property, it usually provides a mode for the valuation of such property, and creates a lien enforceable by distress and warrant, but no such provisions exist in the supposed law. These are the principal arguments used by the majority of the court, in coming to the conclusion that the law in question does not impose a tax upon the property of the defendants, but upon the defendants themselves."

"But wherein does the present case differ in principle from the one supposed?"

"What argument could be used in support of the present law that could not be used with equal force and effect in support of the supposed one?"

"If the law be constitutional in the one case, it is not easy to see why it may not be in the other; and if so then the capacity of the General Government to borrow money at home is at the mercy of the several States; for the right to tax carries with it the right in effect to prohibit," &c. &c. See Opinion of Judge Parke.

On pages 190, 191, (Opinion,) Judge McCurdy, (in attempting to distinguish between the Bank Tax case and this case,) says, "The cases in New York and Connecticut are essentially different."

"In New York the banks are organized according to a general law, and not under particular enactments."

We reply, 1st, that the fact that a corporation is organized under a general law rather than created by a special act makes no difference in the principle upon which it should be taxed.

The banking law of New York is general only in the sense that all banking associations are permitted to organize under it, but when a banking institution *is* organized the act is as special *to*

such bank as if no other institution were incorporated by it." State Bank of Ohio *vs.* Throop, 16 How., 380.

Every valuable privilege given by a charter derived from such general law, and which conduced to the acceptance of it, is a contract as sacredly guarded against encroachment or change by the legislature as if derived from special legislative enactment.

A corporation organized under such general law equally becomes subject to taxation for all its property and rights, (*including its franchise*,) and stands substantially upon the same basis as if created by special charter, and in *Connecticut* by statute; (General Statutes, Title 64, Chap. 1, Sec. 10,) all corporations "whether organized under a special charter or under the provisions of the general act," &c., are put upon the same footing as to taxation.

11th. Again on page 186, Judge McCurdy says, "The question is whether this law interferes with the Act of Congress.

"*Unless such an interference clearly appears*, every presumption must be that the State has not violated its duty and exceeded its power."

Premising that the question is one simply of *construction*, and calls for a *fair* exercise of judicial interpretation, without "presumption" or prejudice, we submit that if presumption were to be made, it would be equally discreet to presume that the legislature meant what the natural interpretation of their language would indicate—to impose a tax *on* the deposits and stock of Savings Banks—and that the wrong is not that the State has "violated *its* duty or exceeded *its* power" but in the improper construction *put by the treasurer* upon the act, and in his *refusal* to permit the deduction which the investment in United States Securities calls for.

Upon this point we refer to a remark of the Superior Court of Connecticut in the case of New Haven *vs.* City Bank (already referred to) in reference to a similar question.

Judge Sanford says, p. 111 (31 Ct.) "We cannot, in the absence of explicit declarations to that effect, impute to the legislature an intention to provide merely that the shareholders should be individually exempt from taxation on account of their respec-

tive interests in the property of the bank while it *retained the power and right to assess and tax all or any of that property against the bank itself.*" "*Such reservation of right would render the promised exemption a worthless figment.*"

12th. The plaintiff in error is not within the reason or policy of any act which should be passed imposing a duty or burthen upon corporations, exercising a franchise, or upon capital employed for gain or profit.

It is *not* a business institution organized to take part in the ordinary commercial transactions of common business life.

It *is* solely a benevolent institution making neither gain or profit for its corporators, trustees or managers.

Judge McCurdy refers to the case Commonwealth *vs.* Peoples' Savings Bank, 5 Allen, 428, as sustaining the position held by the majority, but that case stands upon its own peculiar facts and reasoning and is not sufficiently analogous to be of much value.

The *Constitution* of Massachusetts *specially* authorizes the legislature to levy an excise tax upon any "commodity" within the State. A previous decision of the Supreme Court of that State had recognized a corporate franchise as such a "commodity" as could properly be burdened with such excise.

The Constitution of Massachusetts also requires that rates and taxes shall be "proportional" upon inhabitants, persons and estates. Ch. I. Sec. 4. of Mass. Con. If the tax in question was simply upon property of the corporation, separate from its franchise, it would not be "proportional," but excessive.

The question before the Court was whether by any construction that could properly be given to the Statute that difficulty could be avoided.

The question here discussed—whether the tax is *based upon*, or *burthens property* of the institution—was quite immaterial there.

If it could be treated as resting upon or embracing the franchise, it would be "proportional"—which was the necessity of that case.

The Court say, "it being possible to give the act that construction and it being the duty of the Court to support the Statute" if practicable—that it should be so interpreted.

The reasoning of the Court tends to indicate that they deemed it necessarily a burthen upon the property of the depositors, and it is admitted that such is and must from the nature of the institution be its "*effect and result.*"

Another element of that case and which aided the Court in coming to their result, was, that the tax was to be assessed or estimated *upon the average amount of deposits for the six months preceding the day named.*

As the deposits varied from month to month, the tax as imposed, could *not* be held to be a tax upon any *specific* and *fixed property.*

Here it will be remembered the tax is imposed "*on the total amount of deposits in the bank*" on a specific day.

The adoption of the "amount of deposits" as a "standard of taxable liability" is, of itself, conclusive that the tax, if not upon property *as such*, is *measured by the extent of the property*—the amount of the deposits being the measure of that extent.

This cannot be done while a portion of the property, the amount of which is so adopted "as the standard of taxable liability" is so invested as to be under the protecting power of a higher authority.

If this could in any sense be deemed a tax upon franchise it seems to be clear that the franchise is first and for the purposes of taxation *valued* by the amount of the deposits—the amount of property accumulated under it.

A tax upon "faculty" or "franchise," estimating its value by the money it has secured, is the same thing in substance as taxing the money secured, and a tax upon the money secured—or *with referance to it as a basis*—is substantially the same thing as a tax upon the securities for which it has been exchanged.

The privilege of exemption from taxation of so much property as may have been loaned to the United States, ought not to depend *upon the mode of estimating* the property of an individual or a corporation.

14th. A tax unpaid upon a franchise of a corporation, the power and authority of which is limited to holding, managing and investing money entirely for the benefit of depositors, and which has no corporate property distinct from that which they so hold in special trust, which has no stockholders or members interested in its profits or who can receive dividends from its earnings, necessarily operates as an assessment on the property *of those for whose use* the franchise is exercised.

The parties *for whose use* the franchise is exercised being distinct from the corporation and sustaining no other than a property relation to the corporation—it becomes in its *essence* and *operation* a direct tax upon "property"—the burden falling and resting directly and only there.

If then the tax can be deemed *in any sense* a tax upon the franchise, can it properly be said to be "irrespective of property."

15th. The reasoning and conclusions of this Court in the recent case of Van Allen *vs.* The Assessors (the opinion in which has been published since this argument was mainly prepared) are very much in point in considering the somewhat different question involved in this case.

It seems plainly to be intimated in that case (Opinion, p. 585.) that the Shares in a National Bank owned by an individual are such a subject matter that Congress may by an affirmative declaration of its will exclude the States from the exercise of the power of taxation. And it is *clearly decided* there that the attempted exercise of the right of taxation in New York was ineffective because not in conformity with the limitation in the Act of Congress *providing* for their taxation.

The Shares in a National Bank owned by shareholders—separate and distinct from the capital—held independently like any other property which may belong to an individual—would seem to be clearly distinguishable from the capital *owned by the corporation.*

If *such property* can be taxed *only because Congress has authorized it and subject to the limitations prescribed—a fortiori* a state should be prohibited from imposing a tax in the face of a *positive prohibition* of Congress, which if not directly *upon the property* specially exempt, is so intimately blended with it and so based upon it as to be separable only by a refinement of discrimination and distinction which it is difficult to follow or to understand. See Opinion, 3 Wallace, pp. 583–5.

The reference to the decision in the "Bank of Commerce" case, by the Chief J. and minority of the Court on pp. 592, 3, 4, and the reasoning and deductions therefrom are referred to as illustrating the simple expedients by which constitutional institutions; clear and express congressional enactments, and the public faith of the Nation may all be rendered worthless and illusory if the view of the majority of the Judges of the Connecticut Court can be sustained.

Finally: The fundamental question in this case is, whether indebtedness due from the United States, exempt from taxation by the constitution and expressly exempt by act of congress, "whether owned by an individual or a *corporation*," can be embraced in and made part of any basis with reference to which *the value* of the property (whether franchise or other property) of such individual or corporation is *fixed* for the purposes of taxation.

We have shown that it does not at all avoid the question to say that it is the franchise which is taxed—certainly not, unless it also appears that the tax is levied upon the *naked* franchise, irrespective of property or business as a basis of value or "standard of liability."

As stated by Judge McCurdy, the taxing of a franchise is not confined in its exercise to corporations, but may be enforced against individuals, and examples are given.

It may easily be seen that under such a power the immunity from taxation of a creditor of the United States, will (if the tax in question be sustained) be rendered of no practical value.

Let each individual and corporation throughout the State be required to state the amount of *the cost* of the personal property owned by him on the first day of January in each year, and pay 3-4 of one per cent. on such amount, and you get a tax quite similar to the one in question.

It has no respect to the *value* of the property *at the time of the tax*, but rests substantially as in this case, upon the *amount paid for it*—for the *deposits* of the ptfs'. institution are to be so managed and held that it may be safely said that their "*amount*" represents as nearly the value of the property held, as would the *cost* in the case supposed.

The judgment should be reversed, and the case remitted to the Supreme Court of Errors, with direction to enter judgment for the plaintiff in error.

F. CHAMBERLIN,
Of Counsel for ptf. in error.

Supreme Court of the United States.

DECEMBER TERM, 1867.

THE SOCIETY FOR SAVINGS, Plaintiffs in Error,

vs.

GABRIEL W. COITE, Treasurer of the State of Connecticut.

DEFENDANT'S BRIEF.

R. D. HUBBARD, of Counsel.

McGILL & WITHEROW, Printers and Stereotypers, Washington, D. C.

Supreme Court of the United States.

THE SOCIETY FOR SAVINGS,

PLAINTIFFS IN ERROR,

vs.

GABRIEL W. COITE, TREASURER OF THE STATE OF CONNECTICUT.

DEFENDANT'S BRIEF.

The Legislature of Connecticut, in 1862, enacted that the treasurers of the several savings banks in said State should make annual return to the comptroller of public accounts of the total amounts of all deposits in said institutions, respectively, on the 1st day of July in each successive year, and that each of said savings banks should annually pay to the treasurer of the State a sum equal to one-half of one per cent. on the total amount of deposits in such savings bank, on the days aforesaid. The enactment is in the following language:

SEC. 1. The treasurers of the several savings banks, societies for savings, and savings and building associations, established in this State, shall, within the first ten days of July, A. D. 1862, and annually thereafter, within the first ten days of July in each year, make out under oath and deliver to the comptroller of public accounts, statements of the total amounts of all deposits and stock in said institutions respectively, on the first day of the month in which said statements are herein required to be made. And each of said savings banks, societies for savings, and savings and building associations, shall pay to the treasurer of this State, for the use of the State, a sum equal to one-half of one per cent. on the total amount of deposits and stock in such institution on the 1st day of July in each year—one-half to be paid on or before the 20th day of July, and one-half on or before the 20th day of January, annually hereafter—said tax of one per cent. to be in lieu of all other taxes on said institutions and the deposits therein.

Session Laws of 1862, p. 49.

By an act passed in 1863, the rate of assessment was increased to three-fourths of one per cent.

Private Laws of 1863, p. 130.

The Society for Savings, plaintiffs in error, on the 1st of July, 1863, had $500,161 of their assets invested in Government securities. They claim that these securities were exempt from State taxation, and for this reason that the corporation was proportionally exempt; they therefore refused to pay a sum equal to the prescribed percentage upon the amount of their deposits thus invested. The original proceedings in this case were instituted for the purpose of recovering the tax thus withheld.

The court below held that the tax in question was not a tax on property, but an excise duty on the corporation as such, and rendered judgment accordingly for the plaintiff in the original suit.

Coite *vs.* Savings Bank, 32 Conn., 173.

A word in regard to the history of this statute will be useful.

The statute above quoted has relation to two distinct classes of savings institutions; one called "savings banks and societies for savings," the other "savings and building associations." The former class consists of simple banks of loan and deposit, *having no stock*—or savings banks properly so called—all existing under special charters from the Legislature of the State. The latter consists of certain *stock* associations of a novel and peculiar character, organized under a general law, which may be found in Comp. Statutes of Conn., 1854.

No "savings bank" or "society for savings," properly so called, in the State of Connecticut, is or ever was represented by a single share of stock, and the cases referred to in the plaintiff's brief are "savings and building associations," organized under the general law above referred to.

Bearing in mind the discrimination thus taken, the court will be pleased to observe, in the next place, that the statute in question had reference, in its original form, to savings banks only, not at all to savings and building associations.

The statute was first enacted in 1851, and was in the following language:

> The treasurers of the several *savings banks and saving associations* established in this State, shall, on the 10th day of July, 1852, and annually thereafter, on the 1st day of July, or within ten days thereafter, make out, under oath, and deliver to the comptroller of public accounts, a statement of the total amount of all deposits in said institutions on that day; and shall, at the same time, pay to the treasurer of this State, for the use of the State, a sum equal to one-eighth of one per cent. upon *the total amount of deposits* in their respective institutions on that day, which shall be in lieu of all other taxes upon such institutions or depositors therein after the time aforesaid.
>
> Compiled Statutes, 1854, p. 842, § 18.

This act, it will be seen, was originally applicable to savings banks, or what was the same thing, societies for savings. Such a thing as a "savings and building association" was then unknown. Hence the phrases "*savings and building associations*" and "*stock*" are not to be found.

In 1857 the statute was re-enacted, the rate of the assessment increased, and the statute so altered as to include "the stock" of "savings and building associations,"—a class of savings associations then recently sprung into being.

Finally, in 1862, it was again re-enacted, and embodied in the form first before given, in an act for the assessment and collection of taxes from certain classes of corporations therein named.

The plaintiffs in error, then, belong to a class of savings bank, properly so called, having assets and deposits, but not "stock," and the statute of 1862, so far as it relates to "savings and building associations" and to "stock," has no application to this case. In other words, for the purposes of the issue, we may consider the case as if it arose under the act of 1851.

In the discussion of the case no right will be claimed on

behalf of the State to tax the securities of the Federal Government. Such a right probably does not exist under any circumstances—certainly not where, as in this case, such securities are by legislation of Congress declared to be exempt.

And it is also admitted to be immaterial whether the tax, if imposed on property, is imposed on such securities *eo nomine*, or includes them in the aggregate valuation of the tax-payers' estate.

Then does the act in question affect to tax such securities? If so, the statute must to that extent at least be delared invalid. We are thus brought to a question of the meaning and construction of the act of 1862. In this connection, and before entering upon this question of construction, it will not be altogether irrelevant to make one or two general suggestions.

1. Except as prohibited by the Constitution of the General Government, a State possesses the full sovereign and absolute right of taxation, and the remedy for unequal, unjust, or oppressive taxation is wholly legislative, and not at all judicial.

2. Every presumption is on the side of the validity of the statute law of a sovereign State. This is doubly so when it has received the judicial sanction of the State. In such case a statute should receive the broadest and most liberal construction in aid of its object, unless its restriction is absolutely required to bring it in harmony with the Federal Constitution. It is not claimed that a State may by trick, circuity, or indirection, exercise a power prohibited by the Federal Constitution. Nor has such an evasion been attempted in this case. An insinuation of this sort is contained, and twice repeated, in the opinion of the dissenting judge in the court below. It is there suggested that the peculiar language of the act "is doubtless owing to the anxiety of the Legislature to avoid any constitutional objection."

Coite *vs.* Saving Bank, 32 Conn., 195.

To vindicate the character of the State, and to relieve the case from the prejudice thus unjustly sought to be cast upon it, it is only necessary to refer to the facts before stated.

FIRST. The act was first passed in 1851, and has continued in force (with immaterial changes) ever since.

SECOND. The Government was at this time substantially free from debt, and none of its securities in the market.

THIRD. No savings bank in Connecticut, except the plaintiffs in error, who were in their charter especially allowed so to do, was allowed to invest in Government securities till 1858. It was a rare prescience then that enabled the Legislature of 1851 to forsee that, seven years afterwards, their successors would repeal the law requiring savings banks to loan their funds on mortgage, and allow them to invest in Government securities; and not this merely, but also to foresee that a civil war was to ensue, and that a Government then free from debt would fill the market with its bonds, and that the savings banks of Connecticut would largely invest their deposits in these bonds, and thus try to avoid taxation.

The simple truth, then, is that the Legislature passed this act in the purest good faith at a time when the question now under discussion could not possibly arise, and when no mortal not inspired could possibly foresee that it ever would arise.

3. If the right in question would be legitimate, when referred to one admitted source of sovereign power, and a usurpation if referred to another, it is the duty of the court so to refer the statute, *ut res majis valeat quam pereat.* 5 Allen, 431.

In application of the rules above referred to, I have the honor to submit, as the basis of my argument, the following proposition:

That the statute of 1862 *does not impose a tax on the property of the savings bank, but on the corporation as such; in other words,*

the statute imposes a tax or excise on the privilege or franchise of the corporation.

I.

As to the power of a State to impose excise laws, the following propositions are submitted:

1. That there is no doubt about the authority of a State Legislature to impose taxes on the exercise of a franchise created by itself.

2. There is as little doubt that the Legislature may measure the tax by the measure of exercise.

3. There is no doubt that they may measure the exercise by an arbitrary standard, as a fixed sum or bonus, or by a more equitable standard, as the amount of money received in the exercise of the franchise, or even by the value on an appraisal of the earnings or property (including Federal stocks) owned by the possessor of the franchise. May I be allowed respectfully to inquire whether, if it should turn out that a State had, in perfect good faith and with no design of evasion, imposed upon the franchise of a banking corporation in the act creating that corporation, or in any other act—for it matters not in the case supposed—an annual tax equal to a fractional percentage on the exact value of all the corporate *property* held, this honorable court would feel itself warranted in saying that such an act was void to the extent of all the corporate assets invested in Government stocks? I think I shall not assume too much in saying that over a tax imposed on a franchise, however the quantum of the tax may be measured, limited, or ascertained, this honorable court has no jurisdiction or control whatever.

II.

It is submitted that the act in question should be construed as imposing duties in the nature of excise taxes.

1. By the general system of taxation in existence in Connecticut, the tax-payer is required to pass to the assessor of the town in which he resides a sworn schedule of all his taxable assets. The assessors value them, and enter the value in the assessment lists of the town. All taxes, both State and municipal, are collected on these lists by the collectors of the town, on a warrant issued by a magistrate of the town. This rule is applicable to joint-stock corporations and all chartered corporations except banking, insurance, turnpike, railroad, telegraph, and savings corporations.

It thus appears that whenever the law imposes a tax on property, it provides for an *appraisal of value*, and assesses the tax on that value thus appraised, provides for its collection by warrant of distress, and, it may be also added, the assessment is made a lien on the estate of the tax-payer.

2. In the case of savings banks, the standard fixed by law is one which, in its very terms, ignores all reference to actual assets, modes of investment, accumulations, losses, profits or valuations.

If the company has earned a surplus, no matter how large, above the amount of its deposits, this surplus is not taxable. Suppose the bank had in 1860 invested half a million in cotton instead of United States securities. That single investment would in 1864 have been worth more than the entire aggregate of their present assets. Yet the taxes of the corporation would not have been increased to the amount of a farthing. Suppose, on the other hand, that their investment in cotton had been destroyed by fire, or suppose in any other way the corporation had met with losses, their taxes in such a case would not be diminished to the amount of a farthing.

Again, suppose a savings bank has, by misadventure or embezzlement, become bankrupt, so that it can pay but ten per cent., or even one per cent., to its depositors, manifestly this would not affect its liability to pay a tax on the full amount of "all its deposits."

Thus it is seen that the law in question has no reference to a valuation of assets, but to the fixed arithmetical standard of "the total amount of all deposits."

To suppose that the corporation is entitled to a reduction of taxes because some of their assets happen for the time being to be non-taxable, and are not entitled to a reduction when a portion of these assets become worthless or non-existing, is preposterous. It is an absolute *reductio ad absurdum*.

3. As before stated, where taxes are imposed on property, they are usually enforced by distress and warrant on the property, and, in addition to this, the tax is made by law a lien on the property. But here the law simply declares a corporate liability, enforceable only by *quo warranto*, or by an action at law, in the same way as ordinary business liabilities are enforced.

4. This view of the case is strengthened by the fact that the same Legislature which fixed the taxable liability of these institutions, by reference to the amount of their deposits, also provided that for certain other purposes they should make to the bank commissioners a balance sheet, and an exact return, under oath, of all their assets and liabilities, and of the exact kind, condition, and value of all their assets.

Session Laws, 1862, p. 57.

Is it not fairly deducible that if they had intended to levy the tax on property, or measure its amount by the value of that property, the Legislature would have directed the collection of a percentage on that reported value?

5. The phraseology of the act is consistent with this view. The requirement is not that they shall pay a tax of one-half

of one per cent. on their deposits, nor on a valuation of their deposits, but "*a sum equal to one-half of one per cent. on the total amount of deposits in such institution.*" The idea of *value or valuation* does not enter into a word or syllable of this statute.

The dissenting judge in the court below admits that this language, by its natural force, favors this conclusion, but intimates that this peculiar phraseology was artfully chosen for the purpose of cloaking an illegal purpose of taxing Federal securities. "What other reason," he asks, "can be given why they should say that these institutions should pay a tax equal to three-fourths of one per cent?" We have already answered this point. This precise language is found in the act of 1851, and seven years before savings banks were allowed to invest in Government securities.

6. A tax of a character similar to this is imposed by the seventh section of the act of 1862, on agents of foreign insurance companies, who are required to pay to the treasurer of the State *two per cent. on the gross amount of premiums and assessments annually received and collected by them.*

Now, what is this tax? Obviously an excise tax on a foreign corporation, through its agent, for the privilege of doing business. What is the extent of the tax? Precisely in proportion to the business done. Would it make any difference with the amount of the tax that the foreign corporation or the agent had invested the year's premiums and assessments in Federal securities? Clearly not. Why not? For this simple reason: the tax is not assessed on property of the corporation or agent, but on the corporation as such, or on its agent.

So in the case at bar, the tax is not imposed on the property of the savings bank, but on the corporation. The extent of the tax is measured in each year by the amount of its business, the extent to which it exercises its franchise, or, in other words, by "the total amount of its deposits."

All the taxes imposed by the act of 1862 were of this kind,

This act related to banks, railroad, insurance, turnpike, and telegraph companies. All other corporations of the State were taxed upon a *valuation of assets*, "*in the same manner and to the same extent as if owned by an individual resident in this State.*"

Revised Statutes of 1866, §10 p. 709.

But on the other hand, *savings banks are excepted from the general law—make no returns to the assessors, do not appear on the assessment rolls of the State, make no payment for municipal and local taxes to the towns, cities, and districts in which they are located*, and are simply required to pay an amount into the treasury of the State, just as a bonus would be paid by the corporation created to the power creating it.

Now, why is this duty imposed in this exceptional manner? Because the State intended to impose a tax in the nature of an excise on these corporations. Why on these corporations in particular? The reason is obvious. 1. These corporations were, without a single exception, organized under special charters. 2. They were private corporations exercising *quasi* public powers, and the State was obliged to exercise constant supervision and control over them. No inconsiderable part of the enactments of each annual Legislature was devoted to the regulation of these institutions. Bank commissioners were annually appointed by the Legislature, whose time was constantly devoted to the personal inspection and examination of their affairs, and, in case of insolvency, actual or apprehended, the public officers and courts of the State were required, in a summary way, instantly to take the matter in hand for the protection of the public. In this class of corporations, therefore, it was eminently proper that the State should impose a tax on the franchise which it created, and which it was obliged constantly to guard and protect.

A case quite akin to this arose in the State of Massachusetts, in 1815.

By a statute of that State, passed in 1812, it was enacted that any bank within the Commonwealth should, within ten days after each and every semi-annual dividend, pay to the treasurer of the Commonwealth, for the use of the same, a tax of one-half of one per cent. on the amount of the original stock of said banks, respectively, actually paid in. And if any bank should neglect so to do, it was made the duty of the treasurer to issue his warrant of distress against the delinquent.

The constitution of Massachusetts provides that the Legislature "may impose and levy proportionate and reasonable assessments, rates, and taxes upon all the inhabitants of, and estates lying within, the Commonwealth."

The validity of the statute was called in question as being repugnant to the constitutional provision for the taxation of property. The court held that the assessment was not a tax on the stock, but an excise duty on the franchise of the corporation, and as such well warranted by the constitution.

Portland Bank *vs.* Apthorp, 12 Mass., 252.

But more recently a case has arisen in the same State, which is in every respect parallel with the one at bar.

The Legislature of Massachusetts, in 1862, passed a statute in the following language:

SEC. 4. Every savings bank and institution for savings incorporated under the laws of this Commonwealth, including the Mercantile Savings Institution, in the city of Boston, shall pay to the treasurer of the Commonwealth a tax, on account of its depositors, of one-half of one per cent. per annum on the amount of its deposits, to be assessed, one-half of said annual tax on the average amount of its deposits for the six months preceding the 1st day of May, and the other on the average amount of its deposits for the six months preceding the 1st day of November.

SEC. 5. All taxes provided for by this act shall be paid semi-annually, within ten days after the first Monday in June and December, each payment to be an assessment by the treasurer of one-half the annual percentage.

SEC. 12. All property taxed under the third and fourth sections of this act shall be otherwise exempt from taxation for the current year in which the tax is paid; and no savings bank shall be required to make any return of deposits, in accordance with the provisions of the one hundred and fiftieth and one hun-

dred and fifty-second sections of chapter fifty-seven of the general statutes, but only of collaterals held so long as this act continues in force.

The tax in this case was resisted on the same ground as in the last. The court sustained the validity of the law for the same reasons as before, and held

1. "That the tax must be supported—if at all—as an excise duty."

2. "That where a statute has been passed which, from its nature, is necessarily to be referred to the exercise of powers granted by a particular clause of the constitution, under one branch of which it would be clearly invalid, but under another it might be sustained, it is the duty of this court to presume that the Legislature intended to enact this portion which will support the statute and give it validity."

3. That in the application of the above rule, and from the language of the act, the assessment was to be construed, not as a tax on deposits, but on the franchise of the corporation, and that the amount of the tax was measured by the amount of the deposits, or, in other words, by the value of the franchise and the extent of its use. The court says—

"It appears to us that the assessment imposed by the provisions of the statute under consideration must be regarded as an excise or duty on the privilege or franchise of the corporation, and not as a direct tax on money in its hands belonging to depositors. In the first place, the mandate of the fourth section is clear and explicit. It is the corporation that is to make payment. If it fails to do so, then by the provisions of section eleventh, it is liable not only to an action of contract for the amount of the tax, with costs and interest, but, what is more significant, it may be enjoined from the future exercise of its franchise until all taxes shall be fully paid. As the duty of making payment is usually devolved on those from whom a debt or charge is due, it is fair to infer, in the absence of any explicit provisions to the contrary, that the assessment was intended to be laid on the

corporation by which it is to be paid, and from which it is to be exacted in case payment is not voluntarily made. In the next place, the manner in which the amount of the assessment is to be ascertained clearly indicates that the tax is designed to be a corporate charge. It is not a tax levied on each deposit at a certain rate in proportion to its amount, but it is assessed on the amount of all the deposits in the bank, ascertained and fixed by the average sums which it has had in its hands during the six months preceding a specific day. It is the extent to which the corporation has exercised the franchise conferred on it by law, of receiving deposits during a certain period, that is made the basis on which to estimate the sum which is to be paid for the enjoyment of the privilege. It is difficult to see in what other mode a more just and equitable assessment could be laid on corporations of this peculiar character under the authority to impose an excise or duty on their franchise."

* * * * * * *

"The average amount of money which a corporation thus receives is a fair measure of the benefit which it and those who are interested in its prosperity derive from the use of its corporate functions, and it may therefore well form the basis on which an excise or duty is to be estimated. It is the amount of business which such a bank transacts during a certain period which displays its capacity and the value of the privilege which it enjoys under its charter."

Commonwealth *vs.* Five Cent Savings Bank, 5 Allen, 428.

But a still more recent case, *involving the very issue now at bar*, has arisen in the State of Massachusetts, under the statute before recited, in which the Supreme Court of that State has reaffirmed its prior rulings and re-enforced the principle with great vigor of argument.

The Provident Institution for Savings had an average amount of deposits, for the six months preceding May 1, 1865, of $8,047,652 19, of which $1,327,000 stood invested in the

public funds of the United States. Suit was brought by the Commonwealth for three-eighths of one-per cent. on the amount first named. The defendants contended they were not liable to be taxed for the amount invested in Government securities. The residue of the tax they had paid.

Bigelow, C. J., in giving the opinion of the court, from which we quote at large, says—

"It has already been determined by this court, on full consideration, that the tax on savings banks imposed by St. 1862, c. 224, is not a tax on the property belonging to or held by those corporations, but is in the nature of an excise or duty on their franchises, or their rights granted to them by the Legislature to use, exercise, and enjoy corporate privileges. Upon a re-examination of the question, we see no reason to doubt the correctness of the conclusion at which we arrived in our former decision, in Commonwealth *vs.* People's Five Cents Saving Bank, 5 Allen, 428. Regarded as a tax on property, it would be clearly invalid, under the constitution of Massachusetts, (pt. 2, c. 1, §. 1, art. 4,) because it is not 'proportional;' that is, it is not imposed in proportion to the whole amount of money to be raised by assessment on all the property in the Commonwealth, but is a fixed tax, laid on a certain class of corporations only. (Oliver *vs.* Washington Mills, 11 Allen, 268; Dorgan *vs.* Boston, *ante*, 223.) Commonwealth *vs.* Hamilton Manuf. Co., *ante*, 298. An interpretation of the statute which would construe it as imposing a tax on property would necessarily involve the conclusion that the Legislature had passed an act contrary to the constitution, a construction which cannot be adopted, inasmuch as the terms of the act may be reasonably held to lay an excise or duty on a franchise, which is clearly a legitimate exercise of power by the Legislature under the authority conferred upon it by the constitution.

"It certainly cannot be contended that the franchise granted to and exercised by a savings bank is not a proper subject for an excise or duty. How is it to be graduated or measured? It would not be reasonable to impose it arbitrarily,

irrespective of the benefit or advantage which the exercise of corporate privileges conferred on the body on which the excise was laid. Some method must be resorted to in order to ascertain a fair and just basis on which to calculate the amount of the tax, so that there may be some proportion between the benefits received and the sum paid for their enjoyment. This is essential, in order that the excise or duty may be 'reasonable,' as is required by the clause in the constitution already cited.

In the statute under consideration the Legislature have adopted as a rule by which to ascertain the amount of the tax which each bank is to pay at stated periods the extent of its business during the six months preceding. This is certainly a reasonable standard, because it graduates the amount of the excise on each franchise according to the capacity of the corporation for business, and the value of the privilege which it exercises under its charter. (Commonwealth *vs.* People's Five Cents Savings Bank, 5 Allen, 433.) It is a mistake to say that an excise so imposed operates as a tax on the property of or investments held by savings banks. A corporation is liable to pay the excise, although on the day when it is laid it may not have a dollar remaining on deposit. The statute requires that the tax shall be assessed, not on the property held by a bank, or on the amount of its investments on a given day, but on the average amount of its deposits during the six months preceding. If, therefore, the depositors should have drawn out the full amount of all their respective deposits at any time during the six months, and the corporation should have sold, in order to pay them, all the property in its possession, or which it had previously invested, the bank would still be liable for the tax. In such case, clearly it is imposed, not on property, because in the case supposed it would have none, but on the average amount of its deposits for that portion of the six months during which it held them prior to their withdrawal. How, then, can it be said to be a tax on property? If it is not a property tax in one case, it cannot be so regarded in any other. The nature of the tax does not vary with the

condition or circumstances of each bank on which it is imposed.

But in a broader view, the tax authorized by the statute cannot be regarded as a tax on property. Its amount is not fixed or determined by a valuation of the property of the bank. The average of deposits during a certain period includes only the amount credited to the depositors. It does not embrace a valuation of the investments made by the bank, or the market value of its property. The tax is assessed wholly irrespective of investments, and without any regard to the profit or loss made or incurred by the corporation on the property in its possession or on the business which it has carried on. The average of deposits during the period of time designated in the statute may not be equivalent to the whole property owned by the bank, exclusive of money invested in the securities of the Government."

The amount of the tax in no way depends on the aggregate of the investments of the bank. It must be the same, whether investments have been profitable or otherwise. No valuation of property is necessary to the assessment of the tax, and none is in fact made. How then, in any just sense, can the assessment be deemed to be a tax on property?

The argument urged in behalf of the defendants, pushed to its legitimate and logical result, would seem to lead to the conclusion that a tax on the franchise of a savings bank is unlawful and unconstitutional to the extent to which the corporate property is invested in stocks of the United States. It is certainly true that any assessment imposed on a savings bank operates as an indirect tax on the property of the depositors. Owing to the peculiar nature of this class of corporations, all the property in their possesion, with the interest, accumulations, and profits thereon, belongs to the depositors. Every tax or assessment imposed on the corporation and paid out of its funds tends to diminish the amount of property held in trust for depositors. But does it necessarily follow that a franchise tax on this class of corporations is a tax on property? Clearly not. The corporation

is a distinct legal entity, and is subject to be assessed for its corporate privileges in like manner as all other bodies exercising a franchise conferred by the Legislature. No doubt the imposition of such a tax diminishes the profits of the depositors, and thereby tends to reduce the amount of deposits, so that the banks may have a smaller amount of money to invest in bonds or other securities of the United States. But we cannot see that this furnishes any reason for exempting them from a franchise tax, or renders its imposition unconstitutional and void. The fallacy of the argument urged in behalf of the defendants consists in assuming that the tax in question is a tax on deposits, and is therefore, in substance, a tax on investments. But, as has been already stated, the tax is not based on any valuation of the property of the bank, but solely on the value of its franchise, estimated by the extent to which it has used and enjoyed its corporate powers and privileges during the time for which the tax is assessed."

Commonwealth *vs.* Provident Institution for Savings, 12 Allen, 313.

III.

It only remains to add a word of comment on the Bank-Tax case reported 2 Wallace, 200. This case will doubtless be cited for the defendant. By an act of the State of New York, passed in 1857, the capital stock of all banking companies was made liable to be assessed at its actual value. On the 25th of February, 1862, Congress passed an act, entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States." (U. S. Stat. at Large, 1861 & 1862, chap. 33.) By the second section of this act, it is enacted by Congress as follows: "And all stocks, bonds, and other securities of the United States, held by individuals, corporations, or associations, shall be exempt from taxation by or under State authority."

On the 3d of March, 1863, Congress passed an act, entitled "An act to provide ways and means for the support of the Government." (U. S. Stat. 1862 & 1863, chap. 73.) By the first section of this act, it is enacted by Congress as follows: "And all the bonds and Treasury notes, or United States notes, issued under the provisions of this act, shall be exempt from taxation by or under State or municipal authority."

In the early part of April, 1863, the Supreme Court of the United States, on writs of error to the Court of Appeals of the State of New York, reversed the judgments of that court in the two cases of the people *ex. rel.* The Bank of Commerce, and *ex. rel.* The Bank of the Commonwealth *vs.* Commissioners of taxes and assessments, and held that the stocks of the United States owned by those two banks were exempt from taxation, under the act of 1857.

Immediately after the announcement of the judgment of the Federal Supreme Court in these two cases, and after the passing of the two acts of Congress above specified, and after the banking corporations of the State had loaned to the national Government moneys to an amount exceeding their entire capitals, the Legislature of the State of New York, on the 29th of April, 1863, passed an act, which was signed by the Governor, and took effect as a law on that day. This act is as follows:

"SEC. 1. All banks, banking associations, and other moneyed corporations and associations, shall be liable to taxation on a valuation equal to the amount of their capital stock, paid in or secured to be paid in, and their surplus earnings (less ten per cent. of such surplus,) in the manner now provided by law, deducting the value of the real estate held by any such corporation or association, and taxable as real estate.

"SEC. 2. This act shall take effect immediately."

The act of April, 1863, was an effort by the Legislature of New York to evade the effect of the decision of the Supreme Court. The attempt was so transparent that the Court must have wilfully blinded itself not to perceive it,

and would have forfeited its self-respect if it had not exposed it.

Now this act, it will be seen, provides in terms for "a *valuation.*" The law directs the mode of valuation. It is to be composed of two things: 1. The capital originally contributed. 2. The surplus on hand earned by that capital. In other words, the bank is not allowed to show that its capital is impaired.

Accordingly, the Supreme Court, under the special circumstances of the case, on a question of construction of the act of 1863, in comparison with the act of 1857, and with full knowledge that the former act was passed for the express purpose of circumventing the Supreme Court, held that the act in question was intended to impose a tax on property by a new and specified mode of valuation, and that this new mode was adopted for the purpose of providing a "rule more simple and fixed than the former, and much less burdensome to the commissioners and assessors." "The former mode," adds the Court, "involved an inquiry into the whole of the financial operations of the bank, its several liabilities and available resources—often a complicated and difficult undertaking, and at best of uncertain results."

The decision in this case proceeds on the assumption that the capital and surplus of a bank were intended to represent what the bank was really worth, or, in other words, the balance of assets above liabilities. In the case of an ordinary bank of discount represented by stock, this supposition would be reasonable. Such a bank can have no balance not represented either by capital or surplus. Assuming—as the New York law does—that the capital is unimpaired, you have only to aggregate the capital and the surplus, and you have ascertained to a farthing just what the bank is worth. In other words, capital and surplus are, in the case supposed, equivalent terms for the balance of assets above liabilities, which balance only was under the New York law to be taxed.

Not so in case of a savings bank. The deposits do not represent and are not equivalent terms for the property of the bank. Deposits are sums of money placed with the bank on interest, and withdrawable usually on call or short notice. In other words, *the deposits of a savings bank represent simply the debts it owes for borrowed money*, or, more correctly, the moneys of other people in their keeping, which the owner is at liberty to call for at any time or on short time. By way of illustration, take the case of a bank of discount and deposits. What do its deposits represent? Its property, capital, or surplus? Not at all. Just the contrary. Its liabilities—the moneys of other people placed in the keeping of the bank—it may be for safe custody, it may be for the convenience of the depositor, it may be at interest. If the deposit consisted of anything else than money, the title even would not pass out of the depositor. Suppose I deposit a Government security with a banker to be returned to me on time or call. Pending the deposit he may borrow money on it, collect interest on it, or use it as his own. As between me and the banker, the title does not change. No matter what he may have done with it during the time of deposit—though he may have sold it and converted it into different property, or lost it by theft or accident—it still remains, as against every body else but a *bona fide* purchaser for value, just what it was when I first deposited it—a deposit, *depositum*—my property in the hands of a banker, to be returned *specifically in kind*. This illustrates the essential nature and character of a deposit. If in the case of a deposit of money, the title passes and the banker is not bound to return the specific coins or moneys deposited, it is simply because money has no ear-marks and is incapable of identification.

This same view has been taken by both the legislative and judicial departments of the General Government.

By the one hundred and tenth section of the Internal Revenue act, of June 30, 1864, regulating the taxation of banking associations, the following provisions are made:

"There shall be levied, collected, and paid a duty of one twenty-fourth of one

per cent. each month upon the average amount of the deposits of money subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company or corporation engaged in the business of banking.

"And a duty of one twenty-fourth of one per cent. each month, as aforesaid, upon the average amount of the capital of any banking association, or company, or corporation, or person engaged in the business of banking beyond the amount invested in United States bonds."

Now, why is a duty imposed by the first clause of the act on the whole amount of deposits, *without* deduction or allowance or exemption from investments in Government stocks, whilst the very next section, imposing a duty on the *capital* of the bank, exempts "*the amount invested in Government securities?*"

The reason is obvious. The law assumes that deposits represent, not the property or investments of the bank, but other people's money held on call or temporary loan.

Now, if Congress had intended, by imposing a duty on *deposits* in a savings bank, to reach, through that term, the property of a savings bank, and to levy a tax on that property, is it not marvelous that no provision should have been made for the exemption of that portion of its deposits which are invested in Government securities? Surely, if both classes of banks were to be taxed on property, and favor were to be shown to either, it would have been not to banks of discount but to savings banks.

A contrary supposition would be monstrous in the extreme.

In December, 1865, the Supreme Court of the United States were called upon to decide whether, under the first section above quoted, deposits actually invested were still to be construed as deposits.

The court say:

"Moneys received, as already explained, *whether invested or not, are deposits* within the meaning of the acts of Congress; and, if so, then it is clear that the amount, whatever it may be, is liable to taxation as soon as it is received by the bank, because when received by the bank *it becomes deposits and continues to be such till it is repaid to the depositor.*"

Bank of Savings *vs.* Collector, 3 Wallace, 514.

Now, if it be true, as has been determined by the Supreme Court in the case above cited, that "moneys received" by a

savings bank, "whether invested or not, are deposits," and that "when received by the bank, it becomes deposits, and continues to be such till it is repaid to the depositor," then certain it is that in the case a bar a tax on the "total amount of deposits" of the plaintiff in error, is not and cannot be held to be a tax on their Government securities. The question at bar is *res adjudicata*.

It is submitted, therefore, that for various reasons the Bank-Tax case in the second of Wallace has no application to the issue in hand.

In concluding this argument, may I be permitted, without impertinence, respectfully to suggest to this honorable court that the public mind is chafing sufficiently under exemptions already declared by law. To enlarge these exemptions by judicial construction will tend to aggravate popular discontent and endanger all Government securities.

R. D. HUBBARD,
Of Counsel.

Supreme Court of the U. S.

GABRIEL W. COITE, Treas. of the State of Connecticut
vs.
THE SOCIETY FOR SAVINGS.

PLAINTIFF'S BRIEF.

I.

The Legislature of Connecticut, in 1862, enacted that the Treasurers of the several Savings Banks in said State should make annual return to the Comptroller of public accounts, of the total amounts of all deposits in said institutions, respectively, on the first day of July in each successive year. And that each of said Savings Banks should annually pay to the Treasurer of the State, a sum equal to $\frac{1}{2}$ of 1 per cent. on the total amount of deposits in such Savings Bank, on the days aforesaid. The enactment is in the following language :

SEC. 1. The Treasurers of the several Savings Banks, Societies for Savings, and Savings and Building Associations, established in this State, shall within the first ten days of July, A. D. 1862, and

annually thereafter within the first ten days of July in each year, make out under oath and deliver to the Comptroller of public accounts, statements of the total amounts of all deposits and stock in said institutions respectively, on the first day of the month in which said statements are herein required to be made. And each of said Savings Banks, Societies for Savings, and Savings and Building Associations shall pay to the Treasurer of this State, for the use of the State, a sum equal to one-half of one per cent. on the total amount of deposits and stock in such institution on the first day of July in each year—one-half to be paid on or before the 20th day of July, and one-half on or before the 20th day of January, annually hereafter—said tax of one per cent, to be in lieu of all other taxes on said institutions and the deposits therein.

Session Laws of 1862, p. 49.

By an act passed in 1863, the rate of assessment was increased to $\frac{3}{4}$ of 1 per cent.

Private Laws of 1863, p. 130.

The Society for Savings, defendants in this case, on the 1st of July, 1863, had $500,161 of their assets invested in Government Securities. The Defendants claim that these Securities were exempt from State taxation, and for this reason that the corporation was proportionally exempt ; they therefore refused to pay a sum equal to the prescribed percentage upon the amount of their deposits thus invested. The original proceedings in this case were instituted for the purpose of recovering the tax thus withheld.

The Court below held that the tax in question was not a tax on property, but on the corporation as such, and rendered judgment accordingly for the plaintiff.

Coite v. Savings Bank, 32 Conn., 173.

A word in regard to the history of this statute will be useful.

It was first enacted in 1851, and was in the following language :

The treasurers of the several Savings Banks and Saving Associations established in this State, shall, on the tenth day of July, 1852, and annually thereafter, on the first day of July, or within ten days thereafter, make out, under oath, and deliver to the Comptroller of public accounts, a statement of the total amount of all deposits in said institutions on that day; and shall, at the same time, pay to the Treasurer of this State, for the use of the State, a sum equal to one-eighth of one per cent. upon the total amount of deposits in their respective institutions on that day, which shall be in lieu of all other taxes upon such institutions or depositors therein after the time aforesaid.

Compiled Statutes, 1854, p. 842, § 18.

The act, it will be seen, was originally applicable to Savings Banks only, not to Savings and Building Associations.

In 1857, it was re-enacted. The rate of the assessment increased, and the statute so altered as to include "the stock" of Savings and Building Associations,—a peculiar class of Savings Associations then recently sprung into being.

Finally, in 1862, it was again re-enacted, and embodied in the form first before given, in an act for the assessment and collection of taxes from certain classes of corporations therein named.

In the discussion of the case no right will be claimed on behalf of the State to tax the securities of the Federal Government. Such a right probably does not exist under any circumstances —certainly not where, as in this case, such securities are by legislation of Congress declared to be exempt.

And it is also admittted to be immaterial whether the tax—if imposed on property—is imposed on such securities *eo nomine*, or includes them in the aggregate valuation of the tax-payers' estate.

Then does the act in question affect to tax such securities? If so the Statute must to that extent at least, be declared invalid. We are thus brought to a question of the meaning and construction of the act of 1862. In this connexion, and before entering upon this question of construction, it will not be altogether irrelevant to make one or two general suggestions.

1. Except as prohibited by the Constitution of the General Government, a State possesses the full sovereign and absolute right of taxation, and the remedy for unequal, unjust or oppressive taxation is wholly legislative, and not at all judicial.

2. Every presumption is on the side of the validity of the statute law of a sovereign State. This is doubly so when it has received the judicial sanction of the State. In such case a statute should receive the broadest and most liberal construction in aid of its object, unless its restriction is absolutely required to bring it in harmony with the federal constitution.

3. It is not claimed that a State may by trick, circuity, or indirection, exercise a power prohibited by the federal constitution. Has such an evasion been attempted in this case? An insinuation of this sort is contained, and twice repeated, in the opinion of the dissenting judge in the court below. It is there suggested that the peculiar language of the act "is doubtless owing to the anxiety of the legislature to avoid any constitutional objection." 32 Con. 195.

To vindicate the character of the State and to relieve the case from the prejudice thus sought to be cast upon it, it is only necessary to refer to the facts before stated.

First. The act was first passed in 1851 and has continued in force (with immaterial changes) ever since.

Second. The government was at this time substantially free from debt, and none of its securities in the market.

Third. No Savings Bank in Connecticut was allowed to invest in government securities till 1858. It was a rare prescience then that enabled the Legislature of 1851 to foresee that seven years afterwards their successors would repeal the law requiring Savings Banks to loan their funds on mortgage and allow them to invest in government securities; and not this merely, but also to foresee that a civil war was to ensue, and that a government then free from debt would fill the market with its bonds, and that

the Savings Banks of Connecticut would largely invest their deposits in these bonds and thus try to avoid taxation.

The simple truth then is that the Legislature passed this act in the purest good faith at a time when the question now under discussion could not possibly arise, and when no mortal not inspired could possibly foresee that it ever would arise.

4. If the right in question would be legitimate, when referred to one admitted source of sovereign power, and a usurpation if referred to another, it is the duty of the court so to refer the statute, *ut res majis valeat quam pereat.* 5 Allen, 431.

In application of the rule last referred to I have the honor to submit as the basis of my argument, the following proposition :

That the statute of 1862 *does not impose a tax on the property of the Savings Bank but on the corporation as such ; in other words, the statute imposes a tax or excise on the privilege or franchise of the corporation.*

1. By the general system of taxation in existence in Connecticut, the tax-payer is required to pass to the assessor of the town in which he resides a sworn schedule of all his taxable assets. The assessors value them and enter the value in the assessment lists of the town. All taxes, both State and municipal, are collected on these lists by the collectors of the town, on a warrant issued by a magistrate of the town. This rule is applicable to joint stock corporations and all chartered corporations except banking, insurance, turnpike, railroad, telegraph and savings corporations.

It thus appears that whenever the law imposes a tax on property it provides for an *appraisal of value* and assesses the tax on that value thus appraised, provides for its collection by warrant of distress, and it may be also added, the assessment is made a lien on the estate of the tax payer.

2. In the case of Savings Banks the standard fixed by law is one which, in its very terms ignores all reference to actual assets, modes of investment, accumulations, losses, profits or valuations.

If the company has earned a surplus, no matter how large

above the amount of its deposits, this surplus is not taxable. Suppose the bank had invested half a million in cotton instead of United States securities. That single investment would now be worth more than the entire aggregate of their present assets. Yet the taxes of the corporation would not be increased to the amount of a farthing. Suppose on the other hand that their investment in cotton should be destroyed by fire, or suppose in any other way the corporation should meet with losses, their taxes in such a case would not be diminished to the amount of a farthing.

Thus it is seen that the law in question has no reference to a valuation of assets, but to the fixed arithmetical standard of "the total amount of all deposits."

To suppose that the corporation is entitled to a reduction of taxes because some of their assets happen for the time being to be non-taxable, and are not entitled to a reduction when a portion of these assets become worthless or non-existing, is preposterous. It is an absolute *reductio ad absurdum*.

3. As before stated, where taxes are imposed on property, they are usually enforced by distress and warrant on the property, and in addition to this the tax is made by law a lien on the property. But here the law simply declares a corporate liability, enforceable only by *quo warranto* or by an action at law in the same way as ordinary business liabilities are enforced.

4. This view of the case is strengthened by the fact that the same Legislature which fixed the taxable liability of these institutions, by reference to the amount of their deposits, also provided that for certain other purposes they should make to the bank commissioners a balance sheet and an exact return under oath of all their assets and liabilities, and of the exact kind, condition and value of all their assets.

Session Laws 1862, p. 57.

Is it not fairly deducible that if they had intended to levy the tax on property, or measure its amount by the value of that property, the Legislature would have directed the collection of a per-centage on that reported value.

5. The phraseology of the act is consistent with this view.

The requirement is not that they shall pay a tax of one-half of one per cent. on their deposits, but "a sum equal to one-half of one per cent. on the total amount of deposits in such institution."

The dissenting judge in the court below admits that this language by its natural force favors this conclusion, but intimates that this peculiar phraseology was artfully chosen for the purpose of cloaking an illegal purpose of taxing federal securities. "What other reason," he asks, "can be given why they should say that these institutions should pay a tax equal to three-fourths of one per cent." We have already answered this point. This precise language is found in the act of 1851, and seven years before Savings Banks were allowed to invest in government securities.

5. A tax of a similar character to this is imposed by the 7th Sec. of the Act of 1862, on agents of foreign Insurance Companies, who are required to pay to the Treasurer of the State two per cent. on the gross amount of premiums and assessments annually received and collected by them.

Now what is this tax? Obviously an excise tax on a foreign corporation, through its agent, for the privilege of doing business. What is the extent of the tax? Precisely in proportion to the business done. Would it make any difference with the amount of the tax that the foreign corporation, or the agent, had invested the year's premiums and assessments in federal securities? Clearly not! Why not? For this simple reason—the tax is not assessed on property of the corporation, or agent, but on the corporation as such, or on its agent.

So in the case at bar, the tax is not imposed on the property of the Savings Bank, but on the corporation. The extent of the tax is measured in each year by the amount of its business, the extent to which it exercises its franchise, or in other words, by "the total amount of its deposits."

A case quite akin to this arose in the State of Massachusetts, in 1815.

By a Statute of that State, passed in 1812, it was enacted that any bank within the Commonwealth, should, within ten days after each, and every semi-annual dividend, pay to the Treasurer

of the Commonwealth, for the use of the same, a tax of one-half of one per cent. on the amount of the original stock of said banks respectively actually paid in. And if any bank should neglect so to do, it was made the duty of the Treasurer to issue his warrant of distress against the delinquent.

The Constitution of Massachusetts provides that the Legislature "may impose and levy proportionate and reasonable assessments, rates, and taxes upon all the inhabitants of, and estates lying within, the Commonwealth; and also to impose and levy reasonable duties and excises."

The validity of the Statute was called in question as being repugnant to the constitutional provision for the taxation of property. The Court held that the assessment was not a tax on the stock, but an excise duty on the franchise of the corporation, and as such well warranted by the constitutional provision in respect to excise taxes.

Portland Bank v. Apthorp, 12 Mass., 252.

But more recently a case has arisen in the same State which is in every respect parallel with the one at bar.

The Legislature of Massachusetts, in 1862, passed a Statute in the following language:

SECTION 4. Every Savings Bank and Institution for Savings incorporated under the laws of this Commonwealth, including the Mercantile Savings Institution, in the city of Boston, shall pay to the Treasurer of the Commonwealth, a tax on account of its depositors, of one-half of one per cent. per annum on the amount of its deposits, to be assessed, one-half of said annual tax on the average amount of its deposits for the six months preceding the first day of May, and the other on the average amount of its deposits for the six months preceding the first day of November.

SECTION 5. All taxes provided for by this Act shall be paid semi-annually within ten days after the first Monday in June and December, each payment to be an assessment by the Treasurer of one-half the annual percentage.

SECTION 12. All property taxed under the third and fourth sections of this Act shall be otherwise exempt from taxation for the current year in which the tax is paid; and no Savings Bank shall be required to make any return of deposits in accordance with the provisions of the one hundred and fiftieth and one hundred and fifty-second sections of Chapter fifty-seven of the General Statutes, but only of collaterals held so long as this Act continues in force.

The tax in this case was resisted on the same ground as in the last. The Court sustained the validity of the law for the same reasons as before, and held

1. "That the tax must be supported—if at all—as an excise duty."

2. "That where a Statute has been passed which from its nature is necessarily to be referred to the exercise of powers granted by a particular clause in the Constitution, under one branch of which it would be clearly invalid, but under another it might be sustained, it is the duty of this Court to presume that the Legislature intended to enact this portion which will support the statute, and give it validity."

3. That in the application of the above rule, and from the language of the Act, the assessment was to be construed, not as a tax on deposits, but on the franchise of the corporation, and that the amount of the tax was measured by the amount of the deposits, or in other words, by the value of the franchise, and the extent of its use. The Court says—

"It appears to us that the assessment imposed by the provisions of the statute under consideration, must be regarded as an excise or duty on the privilege or franchise of the corporation, and not as a direct tax on money in its hands belonging to depositors. In the first place, the mandate of the fourth section is clear and explicit. It is the corporation that is to make payment. If it fails to do so, then by the provisions of section eleventh it is liable not only to an action of contract for the amount of the tax, with costs and interest, but, what is more significant, it may be enjoined from the future exercise of its franchise, until all taxes

shall be fully paid. As the duty of making payment is usually devolved on those from whom a debt or charge is due, it is fair to infer, in the absence of any explicit provisions to the contrary, that the assessment was intended to be laid on the coporation by which it is to be paid, and from which it is to be exacted in case payment is not voluntarily made. In the next place, the manner in which the amount of the assessment is to be ascertained clearly indicates that the tax is designed to be a corporate charge. It is not a tax levied on each deposit at a certain rate in proportion to its amount, but it is assessed on the amount of all the deposits in the bank, ascertained and fixed by the average sums which it has had in its hands during the six months preceding a specific day. It is the extent to which the corporation has exercised the franchise conferred on it by law, of receiving deposits during a certain period, that is made the basis on which to estimate the sum which is to be paid for the enjoyment of the privilege. It is difficult to see in what other mode a more just and equitable assessment could be laid on corporations of this peculiar character under the authority to impose an excise or duty on their franchise.

* * * * * * *

The average amount of money which a corporation thus receives is a fair measure of the benefit which it and those who are interested in its prosperity derive from the use of its corporate functions, and it may therefore well form the basis on which an excise or duty is to be estimated. It is the amount of business which such a bank transacts during a certain period, which displays its capacity and the value of the privilege which it enjoys under its charter."

Commonwealth v. Five Cent Savings Bank, 5 Allen, 428.

It only remains to add a word of comment on the Bank Tax Case reported 2 Wallace 200. This case will doubtless be cited for the defendant. By an act of the State of New York, passed in 1857, the capital stock of all banking companies was made liable to be assessed at its actual value. On the 25th of February, 1862, Congress passed an act, entitled "An Act to authorize the issue of United States Notes, and for the redemption or

funding thereof, and for funding the Floating Debt of the United States." U. S. Stat. at Large, 1861 & 1862, Chap. 33. By the second section of this act, it is enacted by Congress, as follows:—"And all stocks, bonds and other securities of the United States, held by individuals, corporations, or associations,—shall be exempt from taxation by, or under State authority."

On the 3d of March, 1863, Congress passed an act, entitled "An Act to provide ways and means for the support of the Government." U. S. Stat., 1862 & 1863, Chap. 73. By the first section of this act, it is enacted by Congress, as follows:—"And all the bonds, and treasury notes, or United States notes, issued under the provisions of this act,—shall be exempt from taxation by, or under State or Municipal authority."

In the early part of April, 1863, the Supreme Court of the United States, on writs of error to the Court of Appeals of the State of New York, reversed the judgments of that Court in the two cases of The People ex. rel. the Bank of Commerce, and ex. rel. the Bank of the Commonweath vs. Commissioners of Taxes and Assessments, and held that the stocks of the United States owned by those two Banks, were exempt from taxation, under the act of 1857.

Immediately after the announcement of the judgment of the Federal Supreme Court in these two cases, and after the passing of the two acts of Congress above specified; and after the Banking Corporations of the State had loaned to the National Government moneys to an amount exceeding their entire capitals, the Legislature of the State of New York, on the 29th of April, 1863, passed an act which was signed by the Governor, and took effect as a law on that day. This act is as follows:

"SECTION 1. All banks, banking associations, and other moneyed corporations and associations, shall be liable to taxation, on a valuation, equal to the amount of their capital stock, paid in, or secured to be paid in, and their surplus earnings (less ten per cent. of such surplus) in the manner now provided by law, deducting the value of the real estate, held by any such corporation, or association, and taxable as real estate."

"SECTION 2. This act shall take effect immediately."

The Act of April, 1863, was an effort by the Legislature of New York to evade the effect of the decision of the Supreme Court. The attempt was so transparent that the Court must have willfully blinded itself not to perceive it, and would have forfeited its self-respect if it had not exposed it.

Now this act, it will be seen, provides in terms for "a valuation." The law directs the mode of valuation. It is to be composed of two things. 1. The capital originally contributed. 2. The Surplus on hand earned by that capital. In other words, the bank is not allowed to show that its capital is impaired.

Accordingly, the Supreme Court, under the special circumstances of the case, on a question of construction of the act of 1863, in comparison with the act of 1857, and with full knowledge that the former act was passed for the express purpose of circumventing the Supreme Court, held that the act in question was intended to impose a tax on property, by a new and specified mode of valuation. And that this new mode was adopted for the purpose of providing a "rule more simple and fixed than the former, and much less burdensome to the commissioners and assessors." "The former mode," adds the Court, "involved an inquiry into the whole of the financial operations of the bank, its several liabilities and available resources—often a complicated and difficult undertaking, and at best of uncertain results."

It is submitted, therefore, that the decision in question has no application to the case at bar.

Wm. McFarland

declared in the acts of Congress, and in the decisions of the Supreme Court of the United States, imparts to the power of the government to borrow money *complete immunity*, not only from *direct* interference by taxation upon property *as such*, but from *indirect* interference by the states in respect to the *lender*, "whether individual, corporation or association." The *modus* is immaterial. In whatever way taxation results or is effected upon the property, or upon the person or corporation *with reference to the property as a basis or* "*standard of liability*," it hinders and impedes the government in its power to borrow money, and is therefore unconstitutional and void.

It may be said that state corporations exist by the will of the state legislature, and that the state may therefore tax them as it pleases; but while they do exist, they, as well as individuals, are to be at liberty to loan money to the government and take the benefit of the exemption from taxation which such loans enjoy. Especially should that privilege be enjoyed where, as here, the law of the state expressly authorizes the corporation to loan its funds to the government. The case referred to in 5th of Allen's Reports, stands upon its own special facts and reasoning, and differs so materially from this case as not to be an authority.

McCurdy, J. This case is of more than ordinary importance, both from the amount of the interests at stake and the nature of the principles involved. Savings institutions have ever been favorites of the public and of legislative bodies. Immense sums are entrusted to their keeping. Great care should therefore be exercised to prevent injuring their undoubted rights. Very great care should also be observed, especially at the present time, not to lessen, however slightly, the ability of the nation to obtain by its credit the means to sustain its life.

On the other hand, no portion of the community should be released from its proper share of the public burdens, and the rightful authority of a state over the taxation of its own citizens should be rigidly upheld.

This right of a state to tax, is necessary to its very existence, and its power, except when restrained by some constitutional limitation, or by the fundamental principles of natural justice, (which control all legislation,) is supreme. Chief Justice Marshall, in the case of *Weston* v. *The City of Charleston*, (2 Peters, 449,) speaking of this authority, says, "it is a right which in its nature acknowledges no limits." In the use of this power the state may act judiciously or otherwise, but with the exercise of its discretion no court can interfere.

It was justly remarked by Judge Ellsworth, in *Savings Bank* v. *New London*, 20 Conn., 117, and again in *Carrington* v. *Farmington*, 21 Conn., 72, that taxes are at best arbitrary and unequal. Studied discriminations are made in all tax laws in favor of or against particular persons, or subjects, or trades, or business, or institutions. The character of this kind of legislation, as arbitrary, partial, cumulative, and capricious, is well exemplified in the recent acts of Congress. From the nature of the case there can be no uniform rule of making the assessments. Most commonly the tax is laid upon property. But this is not always the more convenient, expedient, or just mode. A large portion of the national revenues accrues from a tax on incomes, dividends, licences, legacies, stamps, &c., irrespective of property.

In this state, for many years and until very lately, the form of taxing lawyers, physicians, traders, tavern keepers, manufacturers, and mechanics, was to assess them, either at a fixed sum for each respective class, or at the discretion of the "listers." In familiar language this was called "an assessment on the faculty." The present statutes are not free from similar provisions. A capitation tax still remains. The agent in this state of an insurance company existing out of the state, is required, in consequence of being allowed to conduct business here, to pay a certain percentage on the amount of his premiums and collections. Auctioneers and express companies are assessed in a like manner. In the case of quarry, mine, and ore bed companies, (joint stock or incorporated,) not only the stock itself, but the franchise, is expressly made

subject to assessment. By a law of 1862 it is enacted that for the purposes of taxation no stock of any railroad company shall be estimated in the list at less than ten per cent of its par value, although it was then notorious that much of the stock so to be valued was utterly worthless.

These examples show that the state has ever adopted, at its own will, different bases of taxation as applied to different subjects, and there is no occasion for surprise that the legislature in the matter before us thought proper to impose a tax directly and specifically on these corporations, as such, without reference to their assets.

There is no reason why they should not contribute their full share to support the government through which they exist and flourish. At first their number and deposits were so small, and their objects and results so beneficent, that they were properly relieved from the common burden. They have since been found so advantageous, not only to the humble few whose interests they were expected to subserve, but to the public at large, that in this state they have attracted to their vaults nearly thirty millions of dollars. They act under charters from the state for which other banks formerly paid high premiums. Their franchise confers privileges of great value. A corporation is a creature of law, invisible and intangible, and possessing properties by which a succession of persons are considered the same. It may buy, sell, and contract, sue and be sued, take, hold and transmit property, as though it were a single individual, and that one an immortal being. Marshall, C. J., in *Dartmouth College* v. *Woodward*, 4 Wheaton, 636.

Over this class of corporations the state keeps careful and continual watch. It requires that the trustees shall neither receive any pay, nor derive any benefit from the use of the funds, and that they shall render their regular accounts. It sends its commissioners to examine their condition and protect their interests. It exempts them from all taxation except the one in question, and a tax on their real estate not

used for banking purposes. The importance of this exemption is very great and is increasing with a fearful rapidity.

In return for these privileges an equivalent is exacted in the payment of a tribute in the form prescribed by statute. There is a difficulty in arranging the mode of taxation adapted to these institutions. It was said by Judge Ellsworth, in the case of *Savings Bank* v. *New London*, 20 Conn., 117, that they have properly "no stock and no capital." They are merely places of deposit where money can be left, to remain or be taken out at the pleasure of the owner. The sums held by them are perpetually changing. On these accounts the legislature established as a rule of assessment the amount of deposits on hand at particular times.

The act of Congress declares that the bonds, treasury notes, and other obligations of the United States, shall be exempt from taxation by or under state or municipal authority. The statute of Connecticut requires that each of the savings banks shall annually pay to the treasurer of the state a sum equal to three-fourths of one per cent on the total amount of deposits in such savings bank, on the first day of July in each successive year. The question is whether this law interferes with the act of Congress. *Unless such an interference clearly appears*, every presumption must be that the state has not violated its duty and exceeded its power.

It is a well-known rule of construction that laws relating to the same subjects shall not be held to be inconsistent with each other, unless the conflict results from the express terms used or from a necessary implication. In this case no difficulty exists in the language of the laws, and very little, as we think, in the meaning and spirit of them. The nation says that its obligations shall not be taxed. The state does not tax them. It lays its hand on the bank itself. It does not allude to any property as such. It provides for no valuation of property. It creates no lien. It directs no sale or forfeiture for neglect of payment. It treats the deposits as a sum of money left with the bank by its owners on interest for a time, and liable at any moment to be withdrawn. It takes no notice of the manner in which this sum may be invested,

or whether it is invested at all; and it never inquires into the profits, or losses, or condition, or prospects, of the bank. If its assets double in value it pays no more; if they decrease one half it pays no less. If they consist partly of forged notes not collectible, no allowance is made; why then should a deduction be claimed when a like part is invested in notes not taxable *merely?*

These considerations prove, as it seems to me, conclusively, that the tax is not imposed on the securities, but on the bank; and it is not imposed on the bank because of its holding the securities, but in consequence of its doing, under favor of the state, certain business which that favor renders profitable. The tax is a payment for the benefit. It is proportionate to the extent of the business, and the amount of the deposits is the index or measure of that extent. The tax stands upon the same ground as that collected of an insurance agent or an auctioneer, as before referred to. It resembles an assessment on a stock and exchange broker, dealing in these securities, not on account of the securities but for the occupation which he pursues; or perhaps more nearly a percentage levied upon a pawn broker, depending upon the amount of his loans, which is certainly no tax upon the heterogeneous articles left with him in pledge. It is hardly more a tax upon property than would be a contribution demanded by a military commander of a captured city, as the price of his protection.

In this case it has been shown that the tax is not only laid upon a legitimate subject, but is eminently just and proper. This fact, however, is immaterial, for the law of the state, not conflicting with the act of Congress, is peremptory and supreme. The legislature may well say, "*Sic volo, sic jubeo; stet pro ratione voluntas.*"

This view of the subject avoids any objection arising from the decisions of the Supreme Court of the United States in the case of *Mc Culloch* v. *Maryland*, and other cases of that class, relied upon by the counsel for the defendants.

But an earnest and a very plausible argument against the state law, is, that it deprives the national obligations of an immunity which contributes materially to their value. The reply to this

is, that such is not the object of the law, nor its direct and immediate effect. The tax is laid, as we have seen, on the corporation for its facilities of business, and not on its assets. The mode is chosen as the best, if not the only one, appropriate to the institutions. Their assets are continually varying in character as well as in amount. The securities pass by delivery. On the day of the required return the bank may be holding none; or it may have a large portion of its deposits thus invested, possibly so arranged for the very occasion, and in reference to the tax. The law is unable to follow these changes, perhaps dodges, and ignores them altogether. The state, in a friendly spirit, allows large amounts from its banks and trust funds to be placed in the national obligations; and this favor probably enhances, as much as the tax lessens their worth.

If the unintentional, remote, and indirect result of the law is, in some degree, to affect their value, surely that circumstance should not be held sufficient to nullify the high prerogative of the state in a matter so vitally important as the taxation of its own citizens, and especially the institutions of its own creation.

Suppose that the state should extort from private bankers, operating, as they do, extensively in government paper, a license tax so onerous as to diminish, or even terminate their business; or suppose that now, as formerly, the statute required that the money of banks, trust funds, &c., should be loaned on interest in such a manner as to exclude the use of national securities; the tendency of these measures would of course be to obstruct a wide channel for the circulation of the paper, close a profitable market against it, impair its credit, and reduce its value. But would the laws be unconstitutional? Would an assessment of a certain percentage upon legacies be inoperative in a particular instance because the estate to be charged consisted wholly or in part of government bonds? And yet the immunity in such a case might add greatly to their demand for the purposes of investment. It is never within the scope of human law to embrace distant and con-

tingent consequences. The connexion between cause and *ultimate* effect is an endless chain.

The conclusion to which we have come corresponds with the decisions elsewhere in similar cases. In Massachusetts a question arose as to the power of the state under its constitution "to impose upon savings banks an annual tax on account of their depositors upon the amounts of their deposits," to be assessed at certain times of the year as provided by the statute. The court sustained the law. Bigelow, Ch. J., after stating some general propositions, says:—"Having in mind these well settled rules of exposition, it appears to us that the assessment imposed by the provisions of the statute under consideration must be regarded as an excise or duty on the privilege of the corporation, and not as a direct tax on money in its hands belonging to depositors." Again:—"If it be objected to this view of the effect of placing an excise on the franchise of savings banks, that it, in its essence and operation, is a direct tax on property because the burden actually falls on depositors, the sufficient answer is, that this result flows from the peculiar nature of the franchise on which the tax is laid." And again:—"The subject to be taxed was the present existing value of the franchise of these corporations, that is, the amount of benefit and advantage which the charter of each bank conferred on those who held it and enjoyed its privileges." *Commonwealth* v. *People's Savings Bank*, 5 Allen, 428.

By the revised statutes of New York in 1830, it was provided that moneyed corporations should be assessed on "the amount of capital stock paid in and secured to be paid in," &c. The courts held in numerous cases that the tax was not on the property but on the corporation. *The People* v. *Commissioners of Taxes*, 23 N. York, 192; *The People* v. *Supervisors of Niagara County*, 4 Hill, 20; *Farmers' Loan & Trust Co.* v. *City of New York*, 7 id., 261; *Bank of Utica* v. *City of Utica*, 4 Paige, 399; *Mutual Ins. Co. of Buffalo* v. *Supervisors of Erie County*, 4 Comst. 442; *Sun Mutual Ins. Co.* v. *City of New York*, 4 Seld., 241; *Bank of Commerce* v. *Commissioners of Taxes*, 25 How. Pr. R., 9. In 1857 the law was changed, and the statute enacted that instead of taxing

the nominal capital, expressed by the words "capital paid in," the officers should assess the capital stock at its *actual value*. In the cases of the Bank of Commerce and the Bank of the Commonwealth, 2 Black, 620 and 635, the Supreme Court of the United States, held—Judge Nelson giving the opinion—that by the law as it stood prior to the act of 1857, (that is, under the law of 1830,) "it was immaterial as to the character or description of property which constituted the capital, as the tax was wholly irrespective of it. The tax was like one annexed to the franchise as a royalty for the grant. But since the change of the system, it is agreed the tax is on the property constituting the capital." And therefore it was held that the securities were exempt from taxation.

The principle recognized in these cases is directly applicable to the case under consideration.

But the course of legislation and litigation on the subject in New York did not rest here. For in 1863, after the decision of the Supreme Court of the United States, in the cases in 2d. Black, exempting the securities—Congress having also, in February 1862, passed a law expressly exempting them when held by a corporation as well as an individual—the legislature of that state enacted that all banks should be liable to taxation, on "a *valuation equal* to the amount of their capital stock, paid in or secured to be paid in, and *their surplus earnings*," &c. Thereupon the Court of Appeals, in the cases of the Bank of Commerce and the Bank of the Commonwealth, decided that the law of 1830 was substantially restored and the securities were not exempt.

These cases were taken to the Supreme Court of the United States, and it now appears (February 1st, 1865,) that the decisions in New York have been reversed, and the securities have been declared free from liability. The opinion is not yet published. But we can not believe that the final settlement of the question before that tribunal will interfere with the determination of this court, as the cases in New York and Connecticut are essentially different. The tenor of our argument points out the difference.

In New York the banks are organized according to a gen-

eral law, and not under particular enactments. They possess capital and stock. The assessment is on a *valuation*, which implies and requires *property as its basis*. The distinction between the assessment of an article at $100, and on a valuation equal to $100, is not very apparent. Indeed the change of the provision in New York is confessedly a sheer evasion of the law of Congress. Not so in Connecticut. Our statute was passed in good faith, without reference and long prior to the national enactment. Our savings institutions, as before stated, are created by special charters, investing them with peculiar powers. They have no stock and no capital. They are in fact large *incorporated agencies* for receiving and loaning money on account of its owners. The assessment is not based on any valuation of property express or implied. It pertains not to ownership but to privilege. It is exacted of the corporation in the nature of a license or income duty as a remuneration for the advantages afforded by the state, and in accordance with a right which the state will not willingly forego.

We advise that judgment be rendered for the plaintiff.

In this opinion the other judges concurred, except PARK, J., who dissented.

PARK, J. The question in this case is, whether the statute of 1862 imposes a tax upon the property of savings banks, or upon the corporations themselves, irrespective of their property.

If it imposes a tax upon their assets, then it is conceded by counsel, and by a majority of the court, that the law conflicts with the constitution of the United States, and the law of Congress, so far as it attempts to tax the investments made by the defendants in the securities of the United States, and is so far null and void. No doubt such would be the consequence. *Mc Culloch* v. *Maryland*, 4 Wheat., 316; *Osborn* v. *Bank of United States*, 9 id., 738; *Brown* v. *Maryland*, 12 id., 419; *Weston* v. *Charleston*, 2 Peters, 449; *Dobbins* v. *Commissioners of Erie County*, 16 id., 435.

With all deference to the opinion of a majority of the court, I submit that the law in question does tax the property of these institutions, notwithstanding its peculiar phraseology.

It will be conceded that what can not be done directly by the legislature of a state, can not be done indirectly, having in view the same end to be accomplished. Whatever may be the means employed, it is the thing done that characterizes the act. It will be conceded further, that so far as the question in this case is concerned, it is a matter of no importance that the standard of taxable liability is the amount of all deposits on the first day of July in each successive year, rather than the amount invested at that time, for the sum in question was not in the bank of the defendants on the 1st day of July, 1863, but had been invested some time previous thereto. It had passed through the bank, and was then in the treasury of the United States, and the bank held its promises to pay in lieu thereof.

Now how does the case stand?

The constitution of the United States has been held to declare, and the law of Congress expressly declares, that no burden shall be placed upon the power of the general government to borrow money—that its promises to pay shall go free of taxation, into the possession of every creditor of the government, and shall remain free. This exemption from taxation is in the nature of a premium, to induce all persons, natural and artificial, to loan their money to the government. The defendants have loaned the government more than five hundred thousand dollars, and if the law in question be constitutional, it is impossible to conceive how or wherein they or their depositors, the real creditors, have been benefited or are likely to be, in the slightest degree, by the exemption. The amount of the defendants' tax is precisely the same to all intents and purposes as it would have been if the law had imposed the tax directly upon the property of the defendants. Will they not see, and will not other savings banks see, where they have in contemplation the loaning of large sums of money to the government, under its many and pressing calls, that this exemption from taxation is a sound without meaning? And

will they not be deterred to a certain extent, and the credit of the government burdened to just that extent?

If this law be constitutional it is not easy to see why every creditor of the general government may not be taxed in a similar manner. Suppose the legislature should pass a law that all persons who have loaned money, or invested the same in stocks of any kind, or who should thereafter do the same, shall make annual return to the comptroller of public accounts, of the total amount of all such sums of money which remain invested on the 1st day of July in each successive year, and that every such person shall annually pay to the treasurer of the state a sum equal to three-fourths of one per cent on the total amount of all such money. Suppose a person should make return that among other investments he had loaned the general government ten thousand dollars. Wherein does his case differ in principle from the one under consideration? No one will doubt the power of the legislature to tax individuals, and to discriminate in imposing such tax. It might be said in such a case, with equal propriety, that the law does not impose the tax upon the property of the individual, but upon the individual himself—upon his capacity to make money. It might be urged that the law does not tax the property of the individual, because it takes no account of the value of his investments. Should they be worth twice or thrice the amount invested, he pays no more; if not half the amount invested, he pays no less. If he has unwisely invested largely in worthless paper, or forged notes, they are not to be taken into consideration in ascertaining his taxable liability, but it is to be ascertained by a fixed, arbitrary, arithmetical calculation—three-fourths of one per cent on the total amount of money invested. It might be urged that where the law imposes a tax upon property, it usually provides a mode of valuation of such property, and creates a lien enforceable by distress and warrant, but no such provisions exist in the supposed law. These are the principal arguments used by the majority of the court, in coming to the conclusion that the law in question does not impose a tax upon the property of the defendants, but upon the defendants themselves. But

wherein does the present case differ in principle from the one supposed? What argument could be used in support of the present law, that could not be used with equal force and effect in support of the supposed one? If the law be constitutional in the one case, it is not easy to see why it might not be in the other; and if so, then the capacity of the general government to borrow money at home, is at the mercy of the several states; for the right to tax carries with it the right in effect to prohibit.

Again, suppose a natural person stood in the place of the defendants, and all the sums of money deposited with the defendants had been deposited with him, to invest as he should think best, for the interest of the depositors, and he had invested such sums in precisely the same manner that the defendants have. Suppose the law had included such a case, and said that he should pay a sum equal to three-fourths of one per cent on the total amount of all such deposits. If the present law be constitutional, it is manifest it would have been if it had gone as far as the case supposed.

Savings banks stand in a similar relation with their depositors. They receive sums of money to invest as they shall judge best, for their interest. The money they receive is not expected to remain in the bank, but to be immediately invested. It may be that the five hundred thousand dollars in question passed directly through the defendants' bank into the treasury of the United States. The defendants act as agents, and whatever securities they have they hold as trustees. *Savings Bank* v. *New London*, 20 Conn., 111.

The case I have last supposed is perfectly legitimate. All that prevents men of great financial ability from establishing agencies of the kind, that would in process of time be co-extensive in business with that of any savings bank in the land, is the fear of the public that the integrity of no one man would be sufficient to withstand the temptations to which he would be exposed.

Much reliance is placed upon the peculiar phraseology of the law in question. That is doubtless owing to the anxiety of the legislature to avoid every constitutional objection; for

what other reason can be given why they should say that these institutions shall pay a tax "equal to three-fourths of one per cent." Why not say directly, that they shall pay three-fourths of one per cent on the total amount of all their deposits? The latter expression is the most natural. The other is studied and shows a design in using it. But can so slight a change in the phraseology make such difference in the result, that the one is constitutional and the other not?

For a similar reason, no doubt, the deposits are taken as the standard of taxation, rather than the amount invested. The legislature knew that such institutions never keep money on deposit more than is absolutely necessary. All their income is derived from investments. But whether the one standard is taken or the other can make no difference.

A majority of the court have relied very much in coming to the conclusion that the law imposes a tax upon the institutions themselves, and not on their property, upon the fact that the law makes no provision for the valuation of their investments, and consequently takes no account whether they are of greater or less value than the sums invested. This may be owing to the reason I have already expressed—the anxiety of the legislature to avoid coming in conflict with the constitution of the United States, or it may be owing to a desire to avoid unnecessary trouble and expense. It is well known that many stocks are above their par value and many below, and should inquiry be made in relation to the value of the investments made by these institutions, many would be found worth more than the sums invested, and many less. The one would offset the other, and the result would vary but little from the amount invested. At all events, it is manifest the legislature considered that these institutions were worth at least the amount of their deposits, and that amount was therefore assumed to be the value of their property; for no other reason can be given why the deposits are made the basis of taxation. The law shows an intention to tax these institutions in an equal and just proportion; but, if the deposits have no relation to property, how is this accomplished? A capitation tax ignores property, and demands of every man a fixed sum,

no matter how rich or poor he may be; but this law does not require of each of these institutions a fixed amount, but a sum in proportion to the amount of its deposits. It therefore must assume that the deposits bear a relation to its property, and for the purposes of taxation are equal to the value of its property. If this be so, then no matter whether the amount of property that a particular institution is assumed to possess is strictly in accordance with the fact or not, for the legislature had a right to assume what it pleased, and the tax is none the less a tax upon property, or the basis of property.

Now wherein lies the difference between a tax upon property, and a tax upon the person measured by the amount of his property? In either case the property is the foundation and moving cause of the tax. If a person has no property he has no tax. If he has small or large possessions his tax is small or large in proportion. The difference is in form and not in substance.

Suppose a person should invest the sum of one thousand dollars in United States securities, and the legislature of the state should say to him in the form of a law, "inasmuch as we can not tax you for the money loaned to the general government, you as an individual shall pay a sum equal to the tax on one thousand dollars, vested in taxable securities." Would such a law be in harmony with the constitution of the United States and the law of Congress? It might be said that the law does not tax the sum loaned; indeed it expressly declares it does not, but imposes the tax upon the individual. But it would be said the intent is too obvious. It is in form a tax upon the individual, but in substance a tax upon the sum loaned. And so it seems to me is the case under consideration. It is in form a tax upon the institutions, but in substance it is a tax upon their property; and it is the duty of courts to look through the form to the substance, through the shadow to the reality. *Brown* v. *Maryland*, 12 Wheaton, 419. These considerations are strengthened by the fact that in no instance heretofore has the state taxed the franchise of any corporations. Such a system of taxation has never been known in the state, and surely it is marvelous that it should

commence with this class of corporations, whose charters are not valuable. Indeed, the same statute that imposes the tax in question imposes taxes upon the property of all other corporations. Why should discriminations be made in relation to savings banks and building associations?

It is said by a majority of the court that these corporations have been the favorites of the state—that they have been nurtured and reared and petted by the legislature, and well may they tax them for the indulgence they have received. Such considerations go to show that these institutions are the proper subjects of taxation, but they throw no light upon the subject of inquiry, whether this law in fact imposes a tax upon the franchise or the property of these institutions. In either mode the legislature has unlimited power to tax them in a constitutional way.

A case more in point than any other that can be found has recently arisen in the state of New York. The legislature of the state in April, 1862, passed a law in these words:—"All banks and other moneyed corporations shall be liable to taxation on a valuation equal to the amount of their capital paid in, or secured to be paid in, and their surplus earnings, &c." The Bank of the Commonwealth had a capital paid in and secured to be paid in, of seven hundred and fifty thousand dollars. After deducting the value of their real estate, in accordance with certain provisions of the law, it was found that the balance of their capital, amounting to more than five hundred thousand dollars, was invested in the securities of the United States. The question was whether the amount so invested should be deducted in computing the amount of their tax. The case went to the Court of Appeals and was there decided against the bank. It subsequently went to the Supreme Court of the United States and has there been decided, since the decision was rendered in this case, by a reversal of the decision of the Court of Appeals.

Chief Justice Denio, in giving the opinion of the Court of Appeals, uses the same arguments that are used by a majority of the court in the present case. He says:—"It would seem plain enough that it is entirely immaterial what the assets of

the bank then are. If the amount of the original nominal capital is alone to be taken into account, it would be officious and improper, or at least useless, for the assessors to make any examination or enquiry into the actual assets. The tax is not assessed upon the property or capital possessed at the time the annual inquiries are made by the proper officers, but upon the amount originally contributed to the corporate enterprise. This was fixed upon somewhat arbitrarily, it may be said, as representing with sufficient practical accuracy the sum upon which the public burdens ought to be assessed. We have seen that if the sum of this original contribution should be diminished to any extent by losses or depreciation of securites, no corresponding diminution was to be made in the assessed valuation. The reason for this was that the existing assets formed no part of the subject by which, according to the statute, that valuation was to be determined. Another criterion, namely the original capital, was to be taken as representing the taxable value. This reason equally excludes any inquiry into the existing assets, with a view to ascertain whether any part of them are in their own nature not subject to taxation. If it could be shown that the discounted paper held by a bank, or the currency notes in its drawer, were forgeries, the assessors would not regard that circumstance, because the assets do not enter into the question and are no part of the data by which the taxable valuation is to be ascertained. And for the same reason when it was shown on behalf of the bank that its securities were not in their nature taxable, the circumstance became utterly immaterial, since neither the character nor amount of such securities have anything to do with the question which the taxing officers were to determine." The case referred to seems much stronger in favor of taxation than the one under consideration, from the fact that the bank had capital stock, and the tax is imposed upon the money paid for such stock; here it is imposed upon money deposited for the purpose of investment, and to be withdrawn from the bank, at the will of the depositors, in accordance with its by-laws.

I am of the opinion that the amount invested by the defendants in the securities of the United States should be deducted in computing the amount of their tax.

SUPREME COURT OF ERRORS.

NEW HAVEN COUNTY, SEPTEMBER TERM, 1864.

Present,

HINMAN, C. J., DUTTON, MCCURDY AND PARK, JS.

DAVID S. FOWLER *vs.* CHARLES BISHOP.

Where a case has been reserved by the superior court for the advice of this court, and judgment rendered by that court in accordance with advice so given, this court will not afterwards, upon proceedings in error, consider questions that the party moving in error had a full opportunity to make and be heard upon when the case was before the court upon the reservation.

A receipt given to an officer for property attached, by which the receiptor promises to deliver the property on demand or pay a certain sum named, is not necessarily a claim for the precise sum named, because the recovery upon it will be only of the value of the property, which may be less. Where therefore, upon such a receipt, in which the sum named was $500, a suit was brought to a city court whose jurisdiction was limited to demands not exceeding $500, it was held that the case was not beyond the jurisdiction of the court by reason of the interest that had accrued upon the claim at the time the suit was brought.

Where a suit was appealed from the city court, whose jurisdiction was limited to $500, to the superior court, and in the latter court the declaration was amended by increasing the damages claimed to a sum greater than $500, the case being

one of which the superior court had original jurisdiction, it was held that the defendant, by going to trial upon the merits without objection, had waived all objection if any could have been made.

Whether such an amendment, if it would have had the effect if sustained to oust the court of jurisdiction, would not be one which the court had no power to make, and therefore a nullity: *Quere.*

Where, in a suit brought to a city court, the writ described the defendant as of the city where the suit was brought, and the defendant, after appealing the case to the superior court, went to trial in that court upon a general denial merely, it was held that he had thereby admitted that he resided within the city.

As to the jurisdiction of an inferior court, where a note has been reduced by payments to a sum within the jurisdiction, see note at bottom of page 201.

COVENANT, upon a receipt given to the plaintiff as sheriff, for property attached. The case had been before this court upon a reservation of it by the superior court for advice, and is reported in 31 Conn. R., 560. The facts there stated were found by the superior court for the purpose of the reservation. It appeared that the suit was originally brought to the city court of the city of New Haven, and that the sum of $500 was demanded as damages in the writ; that the jurisdiction of the city court was limited by law to cases in which the damages demanded did not exceed $500; that the defendant demurred in the city court, and on a judgment against him on the demurrer appealed the case to the superior court; that in the superior court the plaintiff moved to amend, and was allowed by the court to amend his declaration, by increasing the demand for damages to $700; that the defendant after this pleaded a general denial, (with notice of certain matters not affecting any question now made,) and went to trial thereon; and that upon this trial the facts were found upon which the case was reserved for advice.

After this court had given its advice upon the reservation, which was that judgment should be rendered for the plaintiff for the sum of $100 and interest, the defendant in the superior court moved in arrest of judgment, which motion was overruled, and judgment rendered for the plaintiff in accordance with the advice of the Supreme Court. The defendant thereupon filed a motion in error and brought the record before this court for revision. The errors assigned were, that neither the city court nor the superior court had

Supreme Court of the United States.

DECEMBER TERM, 1867.

THE SOCIETY FOR SAVINGS, Plaintiffs in Error,

vs.

GABRIEL W. COITE, Treasurer of the State of Connecticut.

PLAINTIFF'S BRIEF IN REPLY.

F. CHAMBERLIN, of Counsel.

Supreme Court of the United States.

DECEMBER TERM, 1867.

THE SOCIETY FOR SAVINGS, PLAINTIFFS IN ERROR,

vs.

GABRIEL W. COIT, TREASURER OF THE STATE OF CONNECTICUT.

PLAINTIFF'S BRIEF IN REPLY TO SECOND BRIEF OF DEFENDANT FILED AT THE PRESENT TERM.

THE first section of the statute imposing the tax in question, cited on first page of defendant's last brief, provides that said tax "shall be in lieu of all *other* taxes on said institutions and the '*deposits*' thereon."

The word "deposits" here takes the place of "depositors" in the prior law referred to by defendant on page three of his brief.

It may be useful to enquire: what were the "other" taxes, referred to?

The *institutions*, being charitable, and having no separate property, had not previously been taxed—but the *depositors* had been.

To enable the authorities to get at them for the purposes of taxation, the treasurers of the several institutions were required to return the names and residences of their depositors.

That system was productive of much labor and inconvenience; and as many of the depositors lived out of the state, much of the property escaped taxation.

The new method seems to have been adopted as more convenient and more likely to reach all the property; and as the purpose was simply to impose a single tax upon the *property*, it was to be in lieu of all *other* taxes. In 1851, (when the law was enacted,) no property held by these institutions was exempt—there was therefore no occasion for taxing the franchise; and as Judge Parke says (opinion in this case, 32 Ct., p. 196,) that "in no instance had the state taxed the franchise of any corporation;" is it not quite improbable that the legislature had any such purpose in the enactment of this law?

We submit that it is not to be presumed, against the plain and simple meaning of the language used—that instead of taxing *the property* described as the "*total amount of all deposites*,"—they *without motive* intended to inaugurate this, till then, unheard of (as applied to *any* corporation in Connecticut,) mode of taxation.

At foot of page two of brief, defendant says: "No 'savings' bank' or 'society for savings,' properly so called, in the state of Connecticut is, or ever was, represented by a single share of stock, and the cases referred to in the plaintiff's brief are 'savings and building associations,'" &c.

We submit that in getting at the legislative intent, it seems to be still equally important that *some* of the institutions *named* in the statute *had* stock.

"Savings' banks" and "savings' and building associations" are named in the same clause, and if the tax is upon the franchise of *one class* it undoubtedly is of the other, so that the argument as to *intent* is not at all affected by the question whether *both* classes had stock, it being admitted that *one* of them had.

In the third assumption of fact (p. 5 of brief,) the counsel of defendant is entirely in error.

No savings' bank in Connecticut, prior to 1858, was pro-

hibited from investing in stocks of the United States, a larger proportion of their funds than the plaintiff has at any time had so invested.

Twenty-one of them were *specially* authorized so to invest in the original charters under which they were organized.

The New Haven Savings' Bank was chartered in 1820, with clause containing such special authorization. In 1821 the clause conferring *specially* such power was added to plaintiff's charter, and nineteen others follow with charters specially giving such privilege in 1824, 1825, 1827, 1838, 1839, 1846, 1848, three in 1850, one in 1852, two in 1853, three in 1854, in 1855 and 1857 down to the very year 1858 in which by general law all were specially so empowered.

Those institutions not so specially authorized prior to 1858 were permitted by their charters to "*improve* the deposites by investing them in any manner not inconsistent with the laws of the state." Prior to 1858 this was the only limitation.

In 1857 a good deal of loss was sustained by reason of previous injudicious investments—mostly arising out of western securities which had been taken at high rates of interest—the law of 1858 was then passed which specifies the kinds of property in which deposites may be invested—and (among other things) names United States' stocks.

In reply to the propositions on page six of defendant's brief, we say that *none* of them are true, *if applied* to *such exercise* of a franchise as consists in lending money to the United States.

Among the privileges and franchises given to the plaintiff, is that of investing the sums which may be deposited with it in stocks and securities of the United States. This privilege and franchise so far as it may be exercised in the investment of money in such securities of the United States as are by act of congress exempt from taxation, cannot be taxed by state authority.

The borrowing power of the United States can not

be taxed either directly *or indirectly* by state authority.

The power to lend is the correlative of the power to borrow.

If a state has power to tax the franchise of lending to the United States, is it not clear that it has to that extent power to "retard, impede and burden" the power to borrow?

"The states have no power by taxation or otherwise, *to retard, impede, burden or in any manner* control the operation of the constitutional laws enacted to carry into execution the powers of the general government."

"The American people have conferred the power of borrowing money upon their government, and by making that government supreme have shielded its action in the exercise of that power from the action of local governments, *the grant of this power is incompatible with a restraining or controlling power.*" Weston *vs.* Charleston, 2 Pet. 467, 468.

May it not properly be claimed that when the paramount authority to "borrow money on the credit of the United States" puts that credit into the market and by express enactment, *as part of the contract* of borrowing declares that the securities "held by individuals, *corporations or associations, within the United States* shall be exempt from taxation by or under state authority;" it exempted from taxation by or under that authority, the franchise or privilege which such *individuals or corporations* had of lending to the United States, upon the faith of such contract, and of the securities so to be issued?

Can the power to borrow be exercised where there is no correlative power to lend?

Does not the power to tax the franchise or privilege of lending or investing in a given case, "retard, impede, and burden," the "power to borrow" in that case?

The position held by the majority of the court below is, that the states may tax against corporations existing under and in pursuance of their laws and enjoying their protection,

the privilege or franchise of loaning money to the United States.

The illustrations and reasoning in the opinion delivered for the majority, show that the same position would for the same reasons (arising out of protection and privileges enjoyed by favor and under protection of the state government) be held with reference to natural persons.

Granting that "the power to tax implies the power to destroy," is not this holding that the states may prohibit all persons, natural and artificial, existing under and enjoying the protection of their laws, from loaning to the United States?

It is clear that unless there is a privilege or franchise to *lend*, the power to borrow can not be exercised.

Suppose then, the tax in this case be not *nominally* a tax upon *property*—if it be a tax upon the power to *lend*, without the exercise of which the United States can not borrow—is it not necessarily a tax or burden upon "the power to borrow?"

Does it not come within the inhibition stated by this court in 4 Pet., 468–9, "*the right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence upon the contract.*" "The extent of this influence depends upon the will of a distinct government."

"To any extent however inconsiderable it is a burden upon the operations of the government."

"A tax on government stock is thought by this court to be a tax on the contract—a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the constitution."

Is not the contract made by Congress that *this plaintiff* (a "*corporation*,") shall not be taxed on account of these securities violated, if the amount it has invested in them is included in the "*measure of taxable liability?*"

Does *not* defendant's counsel then "assume too much" in

saying that over a tax "imposed on a *franchise*," *however the quantum of the tax may be* "*measured, limited or ascertained*, this honorable court has no jurisdiction or control whatever?"

Congress has enacted that *these securities* held by the plaintiff *as a* "*corporation*," shall be exempt from taxation by state authority.

Can our State tax the *franchise or right to hold such security?*

It is frankly admitted that *it can not tax the* "*security*" *held*, yet the substance of this claim of the defendant's counsel is that if it merely tax *the* "*right to hold*" *the security*, the benefit secured by the law which provides for exemption, *in our hands* is not nullified.

The general government promised us that if we would become its creditor, we should to the extent of that credit have immunity from taxation—the State of Connecticut steps in and *nullifies* that part of the contract of the United States which assures us of such immunity; and although it must be admitted, that this was the principal consideration which induced us to become such creditor, yet my learned friend says, "your honorable court can not interfere."

Congress presents exemption from taxation before us, to induce us to lend money on the securities offered; we purchase the securities, *ownership of which* entitles us to the exemption, and are gravely met with the reply that although our securities are exempt, and even specially so declared, *when held by us as* "*a corporation*," yet we are to pay the same tax *for the privilege of holding them.*

Does our general government "keep the word of promise to our ear, and break it to our hope?"

We say that *whatever be the source* from which *the power to lend to the United States is derived, it is alike under the protection of the paramount authority of the borrower, and is beyond the power of state nullification either legislative or judicial.*

Suppose when these securities were first put upon the market by Congress, and were urged upon these corporations it had been proposed in any state legislature to enact laws taxing the franchise or privilege of the corporations of such state to invest in the securities, *would any court have been found* which would not have held that such an act was in conflict, *in spirit and object*, with the paramount law of Congress, and would tend to "retard, hinder and impede" Congress in the exercise of its power to borrow money on the credit of the United States?

But while public sentiment may have changed to some extent—*the legal principle remains the same.*

The "franchise and *privilege" of investing* money *in United States securities*, is within the protecting power of the same paramount authority which *exempts the "securities themselves"* from taxation and is thereby exempt.

This is absolutely essential to insure to the *securities themselves, substantial* exemption.

Of what practical benefit is it to the general government that its "securities" are exempt from taxation, if each state may tax the privilege and franchise of holding them?

They are not "securities," and have no value *in the hands of the Government;* but must first be purchased, and *held* by some one as evidence of indebtment. But here the state comes in and says, we admit that the *security* is not taxable, but we may tax the *privilege* of purchasing and holding it.

If this be so cannot the state as effectually prevent the general government from borrowing money *by the sale* of its securities, as if it had full power, directly and without circumlocution, to tax the security itself?

If the state has power to impose upon its corporations such conditions as it pleases—which seems in substance to be the claim here, why may it not impose (without this indirection) the condition that for the *franchise and privilege* of holding securities of the United States, they shall pay taxes *upon such*

of their assets "*as consist of bonds, &c. of the United States Government?*"

The answer is, that the exemption *grows out of the character of the security itself;* goes with it *wherever it goes;* and is not at all affected by any relation between a state and its citizens, whether natural or artificial!—If this be true then the same power which guards the *securities* from state taxation *when such securities are held by a corporation*, protects equally the *franchises* of such corporation *to hold* such security.

We also say that these propositions are met and controlled by the decision of this court in the Bank Tax case, 2 Wallace 208, 9—(cited in principal brief.)

The reasoning of Judge Nelson in that case (p. 108,) is entirely applicable to the facts in the present case and it may also be added, that in this case as in that an examination of the State laws of Connecticut with reference to the taxation of Savings Banks, shows that heretofore the tax has been *in all cases* imposed upon the deposits *or property* and *not* upon the *franchise* or *privilege*.

The statements contained in the last paragraph on page 7, and the first on page 8 of defendant's brief, seem to us to rest upon misapprehension.

The "total amount of deposites" is not simply the aggregate of the *original* amounts, *left* by the depositors—but is the "total amount" *which now stands to their credit;*—the original aggregate increased by the *earnings or diminished by the losses*, which the institution has made.

Most of the deposits remain for years and are made up in great part from profits added from six months to six months, to the original deposits. Sometimes two per cent. and sometimes four; depending upon this very condition of things which defendant's counsel says is "*immaterial.*"

The plaintiff is by the express terms of its charter to divide all its profits among its depositors once in six months.

By a general law of the state passed in 1847, all Savings' Banks are so to divide their profits. These profits are then required to be *added* proportionately to the several amounts standing to the credit of the depositors, and it is *this* "total amount" then standing as deposits to the credit of all the depositors, embracing all the property of the institutions, which is fixed upon by the statute as the "basis of taxable liability."

In reply to the claim of the defendants' counsel, (top of page 9 of his brief,) "that the idea of *value* or *valuation* does not enter into a word or syllable of this statute;" we beg leave to add, to what we have already said, that "the total amount of deposits" taken in connection with the statute of Connecticut which requires that "*all the income, profits and earnings*" shall be semi-annually "divided *and applied* among the depositors in just proportion"—General Stat., Ch. 7, Title 7, sec. 34, is necessarily *the value*, and therefore it is "a valuation" of all the property of the institution.

We have already shown the inaccuracy of the learned counsel in assuming that there was ever a time when Savings Banks in Connecticut were not allowed to invest in securities of the United States.

The expression of defendants' counsel on page 10, "But on the other hand *Savings' Banks* are excepted from the general law," &c., is quite liable to be misunderstood.

In all the respects which he there names, Savings' Banks stand with Banks of Discount, *National Banking Associations*, Railroads, Insurance Companies, Express Companies, Telegraph Companies, &c.

All these corporations are taxed in the same manner. Genl. Stat., Title 64, Ch. 1, sections 44–51.

Judge Park (opinion p. 197) speaks of these provisions thus: "indeed the same statute which imposes the tax in question, *imposes* taxes upon *the property* of other corporations."

All these corporations, if any of them, are alike " required simply to pay an amount into the treasury of the state just as a bonus would be paid by a corporation to the power creating it."

The bonus to be paid by this corporation, whose charter is not valuable, and the object of which is benevolent and charitable, would upon its present deposits be over $800,000 *gross*, or more than $37,500 annually.

Is it not absurd to suppose that a legislature intended that a corporation whose officers are required to perform all their duties, as unpaid president and trustees—and to divide *all* its earnings semi-annually to its depositors; should pay (not from the property to be thus divided among the depositors, for the tax is not upon property if defendant is right in his construction, and therefore cannot properly be paid from it,) for the privilege of doing this unpaid business $800,000—or $37,500 annually?

Clearly the legislature of Connecticut never intended any such thing, and until it became desirable for defendant to obtain a tax upon these United States securities, so absurd a construction was never thought of.

Indeed it appears from the statement of the claim as made by the defendant, (record page 2,) and from the statement of the question submitted to the court below as follows: " the question submitted to said court for its adjudication, is whether said society for savings should *account for, and make payment on*," the full amount of deposits in said bank on the first day of July, A. D. 1863, to wit, the sum of $4,758,273.37, or whether so much of *said deposits* as were then invested in securities of the government of the United States, to wit, the sum of $500,161, should be deducted *from the amount of said deposits*, and said society should account for and make payment of said tax *on the balance only* of said deposits," &c., that it was not thought of when the case was made up—nor till my learned friend came into it—and found it the only construction which could sustain defendants' claim. The taxes imposed by the statutes referred to are alike upon Savings'

Banks, *National Banking Associations*, Railroads, &c., &c., and all were framed, *as they were*, for the purpose of getting *at the property* in the simplest and surest way and whether within or without the state.

Defendants' counsel says at the bottom of page 9, (his brief,) "All the taxes imposed by the act of 1862, were of this kind."

All *are* alike in principle and in all their substantial provisions—but all except this one are admitted to be upon *property;* and without the admission, they are clearly within the decision of the Bank Tax case in 2 Wallace. That there was a difference between these similar provisions, in that one was upon *privilege* or *franchise;* and all the rest upon property—never could have entered into the minds of the plain and practical men who framed them.

The expressions in the following and principal clause, on page 10, must be applied to (and are in all respects equally applicable to) the other corporations named in the Statute of 1862, as well as to Savings' Banks. *All*, (*except National Banking Associations*,) are "organized under special charters." *All* are "private corporations," exercising quasi public powers, and the State is equally obliged to "exercise constant supervision and control over them."

Railroad Commissioners are appointed—as well as Bank Commissioners—but that becomes unimportant when it is remembered, that in Connecticut *all* such Commissioners are *paid by the institutions* to whom their time is devoted, and it would surely be loading a *quasi charitable* institution, like a Savings' Bank, without stock—a little heavily—to appoint Commissioners *at their expense*, and then tax the corporation $800,000, because of the duties so performed at their cost.

In reply to the final clause, on page 10, we say that it "was eminently" *improper and improbable* that the State would impose a tax on a franchise which was valueless, instead of im

posing it *upon the property which had always before* been taxed, and which upon defendants' claim, is now free of all tax.

Is it not manifest upon the Statutes referred to, that it is precisely in all material respects like the case in New York, i. e., a more convenient mode of estimating the *property* for the purpose of taxation, and with a view to *its* being taxed in this way "in lieu of all *other* taxes" thereon.

To the second clause, on page 11, we ask your honors to add the words, "and also to impose and levy reasonable duties and excises,"—as defendant himself expressed it in his first brief—and as it is found in the authority from which the citation is made.

And to the 3d clause add so as to make it read at the close, "Constitutional *provision in regard to excise taxes.*"

Defendant claims, (p. 11,) that the case of Provident Institution for Savings, 12 Allen 313, is "in every respect parallel with the case at bar."

We think that case was wrongly decided, and fully believe your honors will reverse the decision, but we respectfully submit that it is unlike the case at bar in several fundamental particulars.

1st. In the fact of the *special* authorization to *tax franchises*, contained in the Constitution of Massachusetts, as expounded by the previous case—"Portland Bank *vs.* Apthorp," in 12 Mass.

We do not claim that without such *special* authorization, a State has not power to tax a franchise—but, that *if there is* such special authorization which has been previously acted upon—it is *more probable* that such may have been the intent of the legislature, and therefore it aids such a construction when there is ground for doubt.

2d. Under the Constitution of Massachusetts it is required that the taxes shall be proportional and equal upon all property, and it was claimed by the court that unless this was held to be a tax upon franchise it would be void for disproportion. Therefore it was perhaps to be presumed that a legislature familiar with the provisions of the constitution by which it was governed, meant to tax the franchise.

No such presumption is called for in this case—where the question is simply—did the legislature mean to exempt $500,000 of property *which had theretofore been taxed*, and originate and impose a tax upon a franchise which had never before been taxed in the history of the State, and that in a case in which there could no possible advantage be derived from the change, unless in avoiding the exemption of these bonds? and not even that, if at the time the Statute was framed, no such bonds were held.

3d. Under the Massachusetts Statute the tax was to be a percentage "upon the average of deposits for the preceding six months," and therefore (for the reasons given by the Ch. Justice, and quoted in the last half of 15th and first half of 16th page of defendants' brief,) could not be held to be based upon property.

4th. The Court in Massachusetts seem to have been considerably influenced in coming to their result, by the fact that under the clause of the Constitution authorizing taxation of a franchise; the law could be made effectual and valid, (certainly as to all the franchise and privilege *not exercised in the purchase and holding of United States Securities*,) while upon any other construction *it would be void.* And the Ch. J. suggests that it was their duty to presume that the legislature intended to enact a valid and effective law.

Here no such difficulty arises, the law is a valid one in any result of this case.

It is a simple question, (in this view of the case,) of in-

tention—if the legislature intended to base the tax upon *property*—it is not invalid as in Massachusetts; but the only effect is that United States securities are exempt and the promise and contract of the general Government is kept, as it clearly ought to be. The effort here is, (on the part of defendant,) to sustain a most improbable construction as to intent—for the sole purpose of avoiding and nullifying *as to us*—that promise and contract.

5th. It does not appear that in Massachusetts as in Connecticut, Savings' Banks are required to divide *all their earnings*, semi annually, among their depositors, so that the "total amount" of deposits at the end of each six months, must necessarily embrace *all investments* and *their results*, and so include all the *property* of the corporation—except its real estate, which is specially reserved for taxation additionally by a proviso at the end of the clause of the Statute quoted by defendants' counsel.

The 12th section of the law of Massachusetts, (quoted on page 11, defendants' brief,) would seem to show that the legislature *there* really intended the tax as one upon *property*, and the Ch. Justice admits, (defendants' brief, pp. 16, 17,) that *indirectly* but "with its entire weight and force," it rests upon the *property* of the depositors; and for this and other reasons which will be abundantly shown by the learned counsel in those cases, we believe that your honors will find it necessary to overrule that decision.

6th. That case while it is like ours in some of its leading features, is still unlike it, (as to corporations,) in this: that most of the corporations grouped together in and taxed by the same statute law of Connecticut, *have capital stock*, which makes it necessary either to hold that the decision of the court in the Bank Tax case, must govern here, or else to hold that the same language signifies one thing when applied to one of the corporations, and quite the opposite when applied to all the others.

In view of the distinctions we have referred to, it will not be surprising if we find that much of the reasoning of the learned Ch. Justice in the case in 12 Allen, is quite inapplicable to the case at bar.

We find quoted on p. 55 of defendants' brief, the following statement of the Ch. Justice: "A corporation is liable to pay the excise, although, *on the day* when it is laid, it may not have a dollar remaining on deposit." "The Statute requires that the tax shall be assessed, not on the property held by a bank, *or on the amount of its investments on a given day, but on the average amount of its deposits during the six months preceding.*"

And again on p. 16 (defendants' brief,) "The *average* of deposits includes only the amount credited to the depositors, &c.

And again, "The amount of the tax depends in no way on the aggregate of the investments of the bank." All of which with the accompanying reasoning is quite inapplicable to this case, for reasons which we have fully stated.

Defendants' counsel seeks to diminish the force of the decision in the Bank Tax case by the suggestions on pages 18, 19, that the Act of the Legislature of New York of April, 1863, was an "effort to evade" the decision of this court in the earlier cases of the Bank of Commerce and Bank of Commonwealth—but it is difficult to see how that would seriously affect the merits of the question involved.

It had been decided that under the law of New York *as it then stood*, the banks could not be taxed for that portion of their capital which was invested in securities of the United States. In the opinion of this court in that case it was stated that under the laws of New York as then existing, the capital of a bank "was taxed upon a valuation like the pro-

perty of individual citizens, and *not as formerly* on the amount of the nominal capital, without regard to loss or depreciation."

The Legislature desiring to obtain the amount of the tax, in some *indirect* way, *attempted* so to tax the banks under a new statute as to make it a tax upon franchise and not upon property or valuation.

If it was a proper thing for a legislature to attempt, it does not seem to have been an improper time to do it—it was done at the earliest moment after it was found that the existing law did not secure the desired end—and why not, if it was an honest and proper thing to attempt *at any time?*

And if not an honest and proper thing to attempt at any time, does not defendant come under his own condemnation?

The 1st clause on page 19 of defendants' brief, is with slight change applicable to this case.

It might properly be expressed thus:

The statute of Connecticut secures a valuation.

It is to be composed of two things:

1. The deposits originally made.

2. The surplus on hand, earned by those deposits. In other words, the entire property as estimated, valued, distributed and applied every six months.

The statements and reasoning on 19th and 20th pages are plausible, but not sound or substantial.

The "deposits" under the laws of Connecticut, as herein before stated, represent as truly the entire property of the bank, as the capital and surplus of a bank of discount in New York does.

Allowing for the characteristic distinction between savings' banks and banks of discount, deposits under the laws of

Connecticut, do as accurately "represent" and are as truly "equivalent terms" for; the property of a savings' bank as "capital and surplus" do of a bank of discount.

The principal (if not the only) difference is, that capital can be withdrawn only at the expiration of the charter or the earlier liquidation by the corporation of its affairs, while deposits are usually to be withdrawn from a savings' bank upon stipulated notice.

But if deposits of a savings' bank represent simply the debts it owes its depositors, so does the capital stock of a bank of discount represent simply its indebtedness to its stockholders.

Deposits and capital stock equally and in the same sense represent "liabilities."

Each represents "*the money of other people placed in the keeping*" of the corporation for a stipulated purpose.

See brief p. 13.

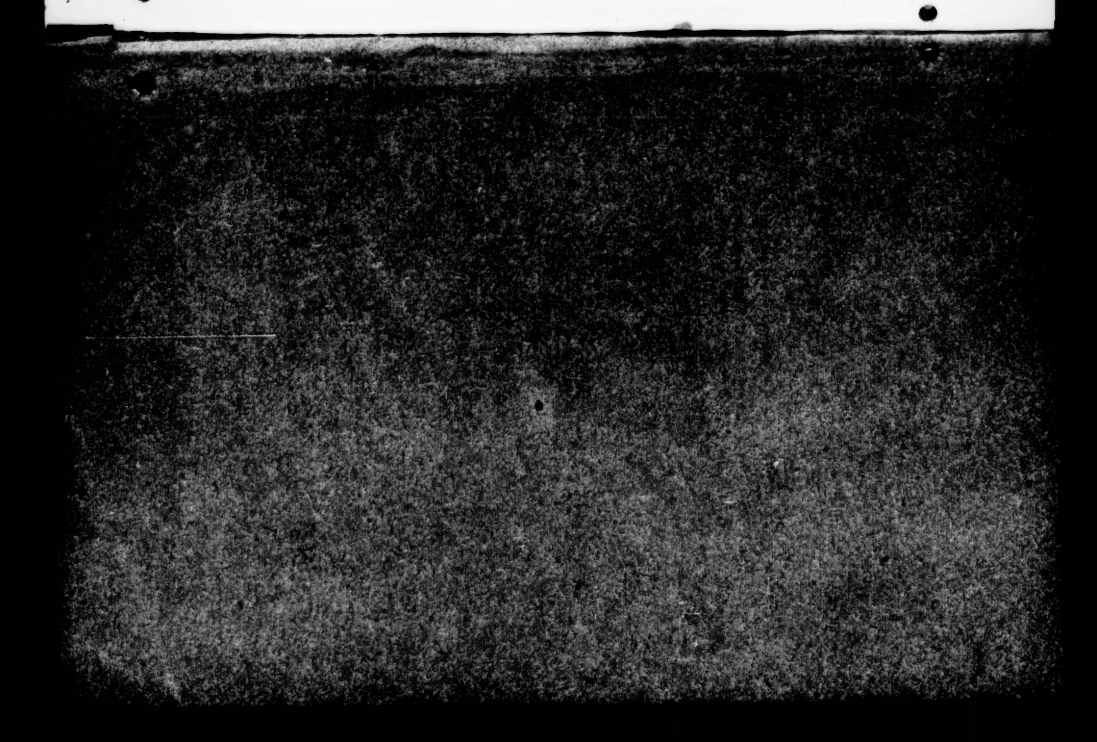
It was not originally supposed that the 110th section of the internal revenue act applied to Savings' Banks, and the inequities to which the defendants' counsel alludes were urged in a case which arose and was decided in December, 1865, by this court—since that decision the law has been so changed as to deprive the argument drawn from its operation; of its force.

In reply to the closing suggestions of defendants' brief—may I be allowed to enquire whether it will tend to diminish the "popular discontent" to which my learned friend alludes, if instead of securing that equality of exemption *for all classes of society*, which is certainly equitable and desirable; the effect of the decision of your honorable court should be, to distinguish between the intelligent, wealthy and powerful *individual* who holding these securities is exempt from taxation, and the charitable associations, who, representing the poor and weaker classes who need protection and care, are deprived of all benefit of such exemptions?

And may I also suggest the futher enquiry whether, if it be desirable that the securities of the United States should be taxed for the purpose of allaying "popular discontent," the other end of the capital is not the more appropriate place in which the gentleman should introduce remedial legislation?

F. CHAMBERLIN,

Of Counsel.



THE

CONSTITUTION AND BY-LAWS

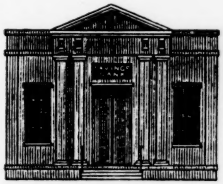
OF THE

SOCIETY FOR SAVINGS,

IN THE CITY OF HARTFORD,

WITH THE

LAWS RELATING TO SAVINGS BANKS.



Office No. 4, PRATT STREET, and is open daily, from 9 to 12 in the forenoon, and from 2 to 5 in the afternoon, (Sundays excepted.)

HARTFORD:
PRESS OF CASE, TIFFANY & CO.
1851.

HARTFORD SAVINGS SOCIETY.

PRESIDENT.

JAMES B. HOSMER, Esq.

VICE-PRESIDENTS.

JAMES H. WELLS,	STEPHEN SPENCER,
CYPRIAN NICHOLS,	SOLOMON PORTER,
SAMUEL TUDOR,	CHARLES SEYMOUR,
CHARLES HOSMER,	HENRY A. PERKINS,
BARZILLAI HUDSON,	ALBERT DAY,
THOMAS K. BRACE,	FRANCIS PARSONS.

TRUSTEES.

CHARLES SHELDON,	ELISHA COLT,
JOHN W. BULL,	DANIEL P. CROSBY,
HAYNES L. PORTER,	TIMOTHY WILLIAMS,
AMOS M. COLLINS,	JOSEPH LANGDON,
EZRA S. HAMILTON,	MILES A. TUTTLE,
WILLIAM ROGERS,	CHARLES SEYMOUR, JR.
CALVIN DAY,	WM. L. COLLINS,
WILLIAM T. HOOKER,	JOHN A. BUTLER,
HENRY PERKINS,	WM. H. ALLYN,
BENJ. W. GREENE,	JOHN BEACH,
ALBERT W. BUTLER,	WM. HUDSON,
JOSEPH CHURCH,	JONATHAN GOODWIN.

OLCOTT ALLYN, *Treas. and Sec.*

AN ACT

To Incorporate a Savings Society in the City of Hartford.

SEC. 1. *Be it enacted by the Senate and House of Representatives in General Assembly convened,* That Charles Sigourney, Michael Oicott, Ward Woodbridge, Isaac Perkins, Henry Hudson, James H. Wells, Michael Bull, James B. Hosmer, George Goodwin, Jr., Samuel Tudor, Jr., Lorenzo Bull, James R. Woodbridge, Russel Bunce, James M. Goodwin, David Porter, Thomas K. Brace, Henry Kilbourn, Christopher Colt, Theodore Pease, Joseph B. Gilbert, John Butler, John Russ, Cyprian Nichols, Barzillai Hudson, Jr., Roderick Terry, Horace Burr, Josiah Hempsted, Normand Smith, Henry Waterman, Jeremiah Brown, Jesse Savage, Thomas Day, John T. Peters, Daniel Wadsworth, Mason F. Cogswell, William Ely, Josiah Beckwith, Charles Hosmer, David Watkinson, George Beach and George Putnam, be, and they hereby are incorporated, by the name, style and title of THE SOCIETY FOR SAVINGS; and that they, and such others as shall be duly elected members of the said corporation, as is in this act provided, shall be and remain a body politic and corporate, by the same name, style and title forever.

SEC. 2. *Be it further enacted,* That the said corporation shall be capable of receiving from any person or persons, disposed to obtain and enjoy the advantages of said incorporation, any deposit or deposits of money, not to exceed the sum of two hundred dollars from any individual in any one year, and to use and improve the

same for the purposes, and according to the discretion herein provided.

SEC. 3. *Be it further enacted*, That all deposits of money received by said corporation, shall be used and improved to the best advantage, by loaning the same, and in a manner not inconsistent with the laws of this State, and the income or profits thereof shall be applied and divided among the persons making the deposits, their executors or administrators, in just proportion, with such reasonable deduction as may be chargeable thereon; and the principal of such deposit or deposits may be withdrawn by the owner or owners thereof, or by any other person or persons duly authorized for said purpose, on giving notice of such intention in writing, and lodging the same with the Secretary of said corporation, at least four months previous to withdrawing such deposit or deposits.

SEC. 4. *Be it further enacted*, That the said corporation shall, at their annual meeting in June, have power to elect by ballot any other person or persons, to be members of said corporation.

SEC. 5. *Be it further enacted*, That the said corporation may have a common seal, which they may change and renew at pleasure; and that all deeds, conveyances and grants, covenants and agreements made by their treasurer, or any other person, by their authority and direction, according to this institution, shall be good and valid; and the said corporation shall at all times have power to sue, and may be sued, may defend and shall be held to answer, by the name and style aforesaid.

SEC. 6. *Be it further enacted*, That a meeting of the members of said corporation, shall hereafter be held at Hartford, some time in the month of June annually, and at such other times as they may judge expedient; and any seven members of the said corporation, the President, a Vice-President, Treasurer or Secretary,

being one, shall be a quorum; and the said corporation, at their annual meetings, shall have power to elect and choose a President, Vice-Presidents, Trustees and all other such officers as to them shall appear necessary, which officers so chosen, shall continue in office one year, and until others are chosen in their room; and all officers so chosen, shall be under oath to the faithful performance of the duties of their offices respectively.

SEC. 7. *Be it further enacted*, That no member of said corporation shall be the hirer or borrower, or surety for any hirer or borrower, of the funds of said corporation, or any part thereof; and no President, Vice-President or Trustee, of said corporation, shall be entitled to or receive any compensation for his services.

SEC. 8. *Be it further enacted*, That the said corporation hereby are, and forever shall be vested with the power of making by-laws, for the more orderly managing of the business of the corporation, provided the same are not repugnant to the constitution and laws of this State.

SEC. 9. *Be it further enacted*, That Michael Bull, be, and he hereby is, authorized to call the first meeting of the said corporation, by causing to be given to or left at the dwelling-house of each member of the corporation, a printed or written notice of the time and place of holding said meeting, at least three days before the day of said meeting; and said meeting shall be held in the city of Hartford, in the month of June.

SEC. 10. *Be it further enacted*, That it shall be the duty of the President and Directors of said corporation, to make an annual report to the General Assembly, containing an account of the amount of deposits and dividends declared and made.

Provided always, That this act, or any part thereof,

may be altered or repealed, at the pleasure of the General Assembly.

GENERAL ASSEMBLY, *May Session*, 1819.

DAVID PLANT,
Speaker of the House of Representatives.

JONATHAN INGERSOLL,
President of the Senate.

Approved, June 1st, 1819.

OLIVER WOLCOTT.

An Act in addition to an Act entitled "An Act to incorporate a Savings Society in the city of Hartford."

Be it enacted by the Senate and House of Representatives in General Assembly convened, That the funds of said corporation may be vested, by purchase, in Bank Stock in any Bank in this State, or any other Public Stock of any State, or of the United States, and dispose of the same from time to time, to such an amount as will meet the demand for deposits made in such Society.

GENERAL ASSEMBLY, *May Session*, 1821.

ELISHA PHELPS,
Speaker of the House of Representatives.

JONATHAN INGERSOLL,
President of the Senate.

Approved, June 4, 1821.

OLIVER WOLCOTT.

An Act in addition to an Act entitled "An Act to incorporate a Savings Society in the city of Hartford."

Be it enacted by the Senate and House of Representatives in General Assembly convened, That the Society for Savings in the city of Hartford, be, and hereby is authorized to hold real estate other than that which may be conveyed to said Society for security, or in payment of debts not exceeding in cost seven thousand dollars.

SAMUEL INGHAM,
Speaker of the House of Representatives.

EBENEZER STODDARD,
President of the Senate.

Approved June 4, 1833.

HENRY W. EDWARDS.

LAWS

OF THE

STATE OF CONNECTICUT

RELATING TO

SAVINGS BANKS.

An Act relating to Savings Banks and Savings Societies.

[Enacted 1843.]

It shall be the duty of the Treasurer, Secretary or Clerk, of each Savings Bank or Savings Society, annually, on or before the 2d Wednesday of May, to transmit to the General Assembly a statement under oath, of the condition of the institution of which he is Treasurer, Secretary or Clerk, on the 1st of April, specifying the number of present depositors, the amount of deposits, the amount deposited in the past year, and the amount of deposits withdrawn, the amount and rate of dividends, the balance of profit and loss, the amount of expenses for the year, the amount of interest due and unpaid, the amount loaned on real estate, the amount loaned on stocks and other personal estate, the amount loaned on notes not secured, the amount invested in real estate, and the locality thereof, and the amount invested in stocks, bonds, or other personal estate, specifying the name and quantity thereof; and if the Treasurer, Secretary or Clerk of any Savings Bank or

Savings Society shall neglect or refuse to make such statement as aforesaid, he shall forfeit and pay to the Treasurer of the State a sum not less than ten, nor more than one hundred dollars, according to the nature and circumstances of the case.

An Act in addition to and alteration of an Act entitled "An Act relating to Savings Banks and Savings Societies."

[Enacted 1847.]

SEC. 1. That any Savings Bank or Savings Society may reserve out of any surplus earnings, such sums as from time to time may be conveniently reserved, not exceeding the sum of five thousand dollars for the sum of two hundred and fifty thousand dollars deposited in such bank or society; and for all deposits over said sum of two hundred and fifty thousand dollars, such bank or society may reserve one per cent. of said excess,—provided such reservations shall not exceed the sum of fifteen thousand dollars; which shall be the contingent fund of said society or bank.

SEC. 2. Any banking house or other fixtures for the use of any Savings Bank or Savings Society, shall form part of said contingent fund.

SEC. 3. All the income, profits and earnings on the deposits and on the contingent fund in any Savings Bank or Society, after defraying the expenses of said bank or society, as provided in its charter, and after deducting the losses of said institution, shall be semi-annually divided, and applied among the depositors in said institution, their executors or administrators, in just proportion,—provided, no dividend need be made on any other fraction than one-half of one per cent.

An Act in addition to "An Act concerning Communities and Corporations."

Be it enacted by the Senate and House of Representatives in General Assembly convened, That the several Savings Banks and Savings Associations in this State, are hereby authorized to receive on deposit, from any one individual in his own name, in any one year, a sum not exceeding four hundred dollars; and no such Savings Bank or Savings Society shall hereafter receive as aforesaid from any one individual, in his own name, or the name of another, in any one year, a greater sum than four hundred dollars as aforesaid.

Approved June 19, 1850.

An Act in addition to an Act entitled "An Act concerning Communities and Corporations."

SEC. 1. *Be it enacted by the Senate and House of Representatives in General Assembly convened*, That each Savings Bank or Savings Society may loan on such personal security as the directors, trustees or managers of such bank or society may aprove, to an amount not exceeding one-half of the whole amount then on deposit in such bank or society; and all other loans shall be secured by mortgage of real estate in this State unincumbered, equal in value to double the amount of the loan secured thereon.

SEC. 2. Section 256 of the Act to which this is an addition and alteration, is hereby repealed.

Approved June 27, 1851.

An Act for the Assessment and Collection of Taxes.

SEC. 18. *Be it enacted by the Senate and House of Representatives in General Assembly convened,* The Treasurer of the several Savings Banks and Savings Associations, established in this State, shall on the first day of July, 1852, and annually thereafter, in each year, on the first day of July, or within ten days thereafter, make out under oath, and deliver to the Comptroller of public accounts, a statement of the total amount of all deposits in said institutions, and shall at the same time pay to the Treasurer of this State, for the use of the State, a sum equal to one-eighth of one per cent. upon the total amount of deposits in their respective institutions on that day, which shall be in lieu of all other taxes upon such institutions, or deposits therein, after the time aforesaid.

BY-LAWS

OF THE

SOCIETY FOR SAVINGS

IN THE

CITY OF HARTFORD.

1. The Board of Directors shall not be liable for any losses which may occur in the Funds or Deposits with the Society.

2. The Board of Direction shall consist of a President, twelve Vice-Presidents, and twenty-four Trustees, to be chosen at the annual, or other general meeting of the Society, and shall hold their offices until the next annual meeting, and until others are chosen in their room.

3. The Board of Direction, for the time being, shall have power to put to use the funds of the Society; to elect such officers as the interest of the Society may require, from among the members of the corporation; to establish Rules for the regulation of the Board; to determine what number of the Board shall constitute a quorum to transact business; to determine the amount of the Treasurer's bond, and the sufficiency of the security.

4. The Board of Direction shall meet at least twice in every year, on the days on which dividends are to be declared, and at all other times when a meeting shall be requested by the President, a Vice-President, or two Trustees. At each of which semi-annual meetings, auditors shall be appointed to audit the Treasurer's ac-

count for the next succeeding half year, who shall make their report in writing to the next succeeding semi-annual meeting of the Board.

5. All deposits shall be entered in the books of the Corporation, and a duplicate shall be given to each depositor, in which his deposits shall be entered by an officer of the Corporation or Direction, and such entries shall be the only evidence of the deposits. And every depositor, on making the first deposit, shall be required to subscribe to the By-Laws of the Society, and shall thereby be considered to give his or her assent to, and shall be bound by all By-Laws and regulations which shall afterwards be ordained and established by the Society in manner aforesaid, as well as to the By-Laws and regulations then in force.

6. Every sum deposited shall be put on interest on the quarter-day next after it shall have been deposited. The quarter-days for this purpose shall be the last days of August, November, February and May.

7. Dividends shall be declared by the Board of Direction semi-annually, viz. in June and December, on all deposits not less than one dollar, which shall have been deposited six months: and on all deposits of not less than one dollar, which shall have been deposited three months or more, and less than six months, the same pro rata dividend shall be declared for the term of three months.

8. Whenever a dividend is declared, it shall be immediately put on interest.

9. The Board of Direction, within one month next following any dividend, may pay off to any depositor the sum due on his or her deposits.

10. Dividends and moneys withdrawn, shall be paid only to the depositor or to the depositor's order or legal representative; but neither the principal nor the interest of any deposit shall be paid to any person, unless

the depositor's book of entries, made by an officer of the Corporation or of the Direction, shall be presented, that such payments may be entered therein, or unless the depositor shall prove to the satisfaction of the Board of Direction, or a committee appointed for that purpose, that such book has been lost or destroyed; in which case the depositor, or his legal representative, shall lodge with the Treasurer a written discharge. And no money shall be withdrawn from the Society, except in January, April, July and October, and on one week's notice of the intention to draw being given to the Treasurer. But if the sum proposed to be withdrawn shall exceed two hundred dollars, four months' notice shall be given in like manner to the Treasurer.

11. No interest shall be computed or paid on any sums withdrawn subsequent to a dividend and before another dividend.

12. Money withdrawn by depositors shall be paid in specie or in bills current at the banks in the city of Hartford.

13. The Treasurer of the Society, before he enters on the duties of his office, shall give a bond with security for the faithful performance of the duties of the trust reposed in him.

14. The Treasurer shall deposit, as soon as may be, and at least once in each week, all moneys of the Society he may have in his possession, in one of the banks in this city, to the credit of the Society, and which may be withdrawn by him as Treasurer of the Society.

15. The Treasurer shall make up his accounts semi-annually on the 1st days of June and December.

16. The Treasurer for the time being, shall execute quit-claim deeds of real estate, mortgaged to the Society as security for money loaned in all cases in which the mortgage debt has been paid.

17. No addition to, or alteration of these By-Laws shall be made, except in general meeting of the Society.

18. A meeting of the Society may be called by the President, at his pleasure, and shall be called by him, or the senior acting Vice-President, at the desire of two Vice-Presidents, or three trustees, or any six members of the Society.

19. All By-Laws heretofore passed, shall be wholly inoperative in relation to all future deposits.

20. That the Treasurer of this Society shall in future give notice to the assessors of all bank stock that may be held by the Society on the 1st day of October of each year, as collateral security for loans made, and no bank stock shall hereafter be received on pledge, except upon condition that those persons who make the pledge shall put the same in their list, and pay the taxes thereon. And the Treasurer shall give notice to the pledgers of stock now held by this Society, that said stock will be reported to the assessors after the current year.

21. That when any member of this corporation chooses to withdraw therefrom, by subscribing to the following declaration in the Record Book of this Society, to wit, *I hereby resign my office and membership in the Society for Savings*, he shall be discharged therefrom.

22. That this Society will not be responsible to any depositor of money in this Institution, or to his or her heirs or assigns, for any fraud that may be practiced upon any of the officers of this Institution, by forged signatures, or by presenting a depositor's book and drawing money, without the knowledge or consent of the owner. And all entries of money paid, made in the depositor's book, by an officer of the Institution, shall be deemed good and valid evidence of money paid, and shall exonerate the Society from any liability on account of any fraud practiced in drawing the money of any depositor.

RULES

FOR THE REGULATION OF THE

BOARD OF DIRECTION.

1. All motions before the Board, shall, when desired, be made in writing, and no motion shall be discussed or voted upon until it has been seconded.

2. All reports of Committees, appointed by the Board, shall be in writing, and signed by the Committee or their Chairman.

3. A Standing Committee of five, shall be appointed to loan the funds of the Society, agreeably to the laws of this State; and for the transaction of any business by said Committee, a majority of them shall be present.

4. There shall be appointed annually, a Clerk of the Board, who shall hold his office for one year, and until another is chosen in his room.

5. Seven members of the Board, the President, or two Vice-Presidents, being present, shall form a quorum for the transaction of business.

Adopted, February 3d, 1830.